Supreme Court, U.S.
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In the
Supreme Court of the United States

HARRY CARMICHAEL AND LOUISE CARMICHAEL,

Petitioners,

v.

THE PAYMENT CENTER, INC.,

Respondent.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Seventh Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1) Whether the court below erred when it failed to defer to the Federal Reserve Board's long-standing interpretation that disclosure of the "amount" of a scheduled payment under the Truth in Lending Act requires disclosure of a numerical amount and instead, contrary to *Ford Motor Credit Company v. Milhollin*, 444 U.S. 555 (1980), substituted its own view that a narrative describing the payment is sufficient.

2) Whether the decision below should be vacated and the case remanded in light of the disposition by the Court in *Household Credit Services, Inc. v. Pfennig*, No. 02-857, cert. granted 123 S. Ct. 2639 (June 27, 2003) .

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-12a) is reported at 336 F.3d 636 (7th Cir. 2003). The opinion of the district court (Pet. App. 13a-24a) is reported at 2002 WL 31177470, 2002 U.S. Dist. LEXIS 18835 (N.D.Ill., Sept. 27, 2002).

JURISDICTION

The court of appeals entered judgment on July 17, 2003. Petitioners' timely petition for rehearing was denied on October 6, 2003. (Pet. App. 25a-26a) The petition for a writ of certiorari was filed on January 5, 2004. The Court has jurisdiction under 28 U.S.C. § 1254(1).

RELEVANT PROVISIONS

This case involves the following provisions of the Truth in Lending Act, 15 U.S. §§1601-1667f (TILA):

> § 1638(a)(6). Transactions other than under an open end credit plan.
>
> For each consumer credit transaction other than under an open end credit plan, the creditor shall disclose each of the following items, to the extent applicable:
>
> * * *
>
> (6) The number, amount, and due dates or period of payments scheduled to repay the total of payments.

(Pet. App. 40a-46a)

This case also involves the following provision of Regulation Z, 12 C.F.R. § 226, issued by the Federal Reserve Board ("FRB" or "the Board"):

> § 226.18. Content of Disclosures
>
> For each transaction, the creditor shall disclose the filing information as applicable:
>
> * * *
>
> (g) *Payment schedule*: The number, amounts, and timing of payments scheduled to repay the obligation.
>
> * * *
>
> (2) In a transaction in which a series of payments varies because a finance charge is applied to the unpaid principal balance, the creditor may comply with this paragraph by disclosing the following information:
>
> (i) The dollar amounts of the largest and smallest payments in this series,
>
> (ii) A reference to the variations in the other payments in this series.

(Pet. App. 33a-39a)

STATEMENT

The United States Court of Appeals for the Seventh Circuit invalidated the long-standing FRB rule that the "amount" of scheduled payments in a credit transaction be disclosed as a numerical figure and not through a narrative description, as the respondent did here. The FRB's earliest statement on this issue appeared in FRB Letter No. 469, dated April 19, 1971, which states: "In the staff's view, the requirement that the creditor disclose the `amount' of the payment, requires him to compute and disclose the dollar amount of each payment." (Pet. App. 82a) Then on November 25, 2003, referencing the erroneous decision below, the Board acknowledged "a matter discussed in a recent court decision regarding the disclosure of payments scheduled...endorsing narrative descriptions of amounts rather than numerical amounts" and rejected this view by again stating that "where the word 'amount' is used to describe a disclosure requirement it refers to a numerical amount throughout Regulation Z." (Pet. App. 53a)

This case involves the deference due to the FRB's interpretations of the TILA. In defiance of the high level of deference due, the court of appeals disregarded the Board's expertise and substituted its own interpretation of TILA for that of the FRB and its staff. In enacting TILA, Congress delegated expansive authority to the Board to interpret the statute and issue regulations and opinions. Under the Court's precedents, the Board's and its staff's interpretations of TILA are valid unless demonstrably irrational. See *Ford Motor Credit Co. v. Milhollin*, 444 U.S. 555, 565 (1980). The Court granted certiorari to revisit the

TILA deference issue in the pending case of *Household Credit Servs. v. Pfennig*, 123 S.Ct. 2639 (June 27, 2003). Thus, petitioners request that the writ of certiorari be granted, the decision below be vacated, and the matter remanded in light of the outcome in *Pfennig*.

A. TILA And Regulation Z

Congress enacted the Truth In Lending Act in 1968 "to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit . . . ." 15 U.S.C. § 1601(a). TILA is a disclosure statute, not a restriction on the amounts that creditors may charge; it "provides for full disclosure of credit charges, rather than regulation of the terms and conditions under which credit may be extended." H.R. Rep. No. 90-1040 (1967), reprinted in 1968 U.S.C.C.A.N. 1962, 1963. Congress determined that "such full disclosure would aid the consumer in deciding for himself the reasonableness of the credit charges imposed and further permit the consumer to 'comparison shop' for credit," thus "encouraging a wiser and more judicious use of consumer credit." *Id.*

Congress recognized that, as a result of the ensuing "complexity and variety, . . . credit transactions defy exhaustive regulation by a single statute." *Milhollin*, 444 U.S. at 559. Accordingly, "to accomplish its desired objective, Congress determined to lay the structure of [TILA] broadly and to entrust its construction to an agency with the necessary experience and resources to monitor its operation." *Mourning v. Family Publ'ns Serv., Inc.*, 411 U.S. 356,

365 (1973). Congress directed the Board to "prescribe regulations to carry out the [statute's] purposes." 15 U.S.C. § 1604(a). TILA provides that "these regulations may contain such classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for any class of transactions, as in the judgment of the Board are necessary or proper to effectuate [TILA's] purposes . . . or to facilitate compliance therewith." Id. Pursuant to that delegation of authority, the Board promulgated a regulation, known as Regulation Z, that implements TILA. See 12 C.F.R. Part 226.

In 1980, Congress amended TILA. Truth in Lending Simplification and Reform Act ("Simplification Act"), Pub. L. No. 96-221, Title VI, 94 Stat. 132, 180. Despite the success of the original TILA, Congress determined that "the interests of both consumers and creditors would be furthered by simplification and reform of the act." S. Rep. No. 96-73, at 2 (1979), reprinted in 1980 U.S.C.C.A.N. 280, 281. Congress found that "disclosure forms given to consumers" often were "too lengthy and difficult to understand." Id. In addition, creditors "encountered increasing difficulty in keeping current with a steady stream of administrative interpretations and amendments, as well as highly technical judicial decisions." Id. Many creditors who "sincerely tried to comply with the act" nonetheless "found themselves in violation and subject to litigation" due to the statute's "increasing complexity and frequent changes." *Id.* Congress thus amended TILA "to provide the consumer with clearer credit information" and to "make creditor compliance easier." *Id.*, 1980 U.S.C.C.A.N. at 280.

B. Proceedings In The District Court

On December 7, 2001, petitioners Harry and Louise Carmichael filed this action in the U.S. District Court for the Northern District of Illinois alleging that the March 20, 2001 loan transaction secured by their residence with the Payment Center, Inc. violated TILA. The District Court had jurisdiction pursuant to the TILA, 15 U.S.C. § 1640(e), and federal question jurisdiction, 28 U.S.C. § 1331. Mr. and Mrs. Carmichael alleged that the Payment Center, Inc. failed (1) to accurately state the amount of the thirteenth and final payment of the loan as required by the TILA, 15 U.S.C. § 1638(a)(6), and Regulation Z, 12 C.F.R. § 226.18(g); (2) to accurately state the annual percentage rate of the loan (resulting from the failure to state the dollar amount of the thirteenth and final payment of the loan) as required by the TILA, 15 U.S.C. § 1638(a)(4), and Regulation Z, 12 C.F.R. § 226.18(e); and (3) to timely rescind the transaction upon proper notice as required by 15 U.S.C. § 1635 and Regulation Z, 12 C.F.R. § 226.23.

Addressing respondent's disclosure of the payment schedule, the District Court stated:

> In this instance Payment Center complied with that requirement in all respects--with the argued-for possible exception that the balloon payment was expressed in words, rather than in terms of a then-unknown dollar figure. In terms of the loan transaction at issue here, this Court cannot conscientiously treat that as a TILA violation that might trigger a

totally unwarranted sanction on Payment Center.

(Pet. App. 18a)

C. The Court of Appeals' Decision

A panel of the Seventh Circuit affirmed and stated: "it is safe to conclude that the word `amount' in § 1638(a)(6) does not necessarily equate to 'dollar figure.'" *Carmichael v. The Payment Center, Inc.*, supra at 640. (Pet. App. 6a)

D. The Request for Rehearing

Mr. and Mrs. Carmichael filed their Petition for Rehearing and Suggestion for Rehearing *En Banc*. Petitioners relied on the FRB Letter of April 19, 1971, (Pet. App. 82a) which states that disclosure of "amount" means "dollar amount," and they explained further that the Supreme Court has instructed that such interpretation of the Truth in Lending Act by Federal Reserve Board staff opinions is dispositive unless demonstrably irrational. *Ford Motor Credit Co. v. Milhollin*, 444 U.S. 555, 565-66 (1980). See also: *Mourning v. Family Publications Service*, 411 U.S. 356, 371-72 (1973) ("[W]here reasonable minds may differ as to which of several remedial measures should be chosen, courts should defer to the informed experience and judgment of the agency to whom Congress delegated appropriate authority."). Petitioners also advised the court below that the continued vitality of the *Milhollin* deference doctrine remains at the forefront of TILA jurisprudence as a result of the Court's recent grant of certiorari in *Pfennig v. Household Credit Servs.*, 295 F.3d 522, 526-27 (6th Cir.

2002), *cert. granted Household Credit Servs. v. Pfennig*, 123 S.Ct. 2639, 156 L.Ed.2d 654 (June 27, 2003).

Two public interest organizations with deep interests and extensive expertise in TILA sought leave to file a Brief *Amicus Curiae* in support of the request for rehearing. Brief *Amici Curiae* of AARP and National Consumer Law Center in Support of Appellants. (Pet. App. 84a-144a) This Brief explained the wisdom and efficacy of the Board's requirement that an "amount" must be disclosed as a number in order to achieve TILA's purpose of promoting consumers' "informed use of credit" [15 U.S.C. § 1601] through comparison shopping for financing facilitated by uniform disclosures, an essential ingredient in "the efficient functioning of a free economic system such as ours." *Mourning v. Family Publications Service*, supra 411 U.S. at 364. The Seventh Circuit denied both the motion for leave to file the amicus brief and the rehearing petition itself. (Pet. App. 25a-28a)

REASONS FOR GRANTING THE WRIT

A. CONSIDERATIONS GOVERNING REVIEW ON CERTIORARI

The Writ of Certiorari should be granted in this case because the U.S. Court of Appeals for the Seventh Circuit has entered a decision in defiance of the FRB's long-standing interpretation of the Truth in Lending Act, 15 U.S.C. § 1638(a)(6), and Regulation Z, 12 C.F.R. § 226.18(g), that the amount of any payment must be expressed as a dollar figure. FRB Letter No. 469 dated April 19, 1971. (Pet. App. 82a) As the Court has stated, "judges ought to refrain from substituting their own

interstitial lawmaking for that of the Federal Reserve, so long as the latter's lawmaking is not irrational." *Ford Motor Credit Company v. Milhollin*, 444 U.S. 555, 568 (1980)

B. THE FEDERAL RESERVE BOARD HAS THE POWER TO PROMULGATE REGULATIONS RATIONALLY INTERPRETING THE TRUTH IN LENDING ACT.

Ordinarily, a court considering the validity of an agency regulation interpreting a statute must undertake a two-step inquiry. If "Congress has directly spoken to the precise question at issue[,] . . . the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress." *Chevron U.S.A. Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 842-43 (1984). However, "if the statute is silent or ambiguous with respect to the specific issue," and the agency regulation "is based on a permissible construction of the statute," the court must defer to that regulation. *Id.* at 843. "The court need not conclude that the agency construction was the only one it permissibly could have adopted . . . or even the reading the court would have reached if the question initially had arisen in a judicial proceeding." *Id.* at 843 n.11. Rather, so long as the agency's construction of the statute is reasonable, the court must defer to the agency and "may not substitute its own construction of [the] statutory provision." *Id.* at 844. Here, the Board acted by issuing the FRB Letter of April 19, 1971 stating that the "amount" of the payment is to be stated as a dollar figure. (Pet. App. 82a)

In the TILA context, the Board's regulations are entitled to even greater deference than might be due under the general administrative-law principles announced in *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, supra. Congress envisioned a special role for the Board in the implementation of TILA when it instructed the Board to "prescribe regulations to carry out the purposes" of the statute. 15 U.S.C. § 1604(a). Congress authorized the Board to broadly promulgate regulations that contain "classifications, differentiations, or other provisions, . . . adjustments and exceptions for any class of transactions, as in the judgment of the Board are necessary or proper to effectuate the purposes of [TILA], to prevent circumvention or evasion thereof, or to facilitate compliance therewith." *Id.* In light of this expansive delegation of authority, as well as the Board's particular expertise in the technical and complex area of credit-related disclosures covered by TILA, the Court has held that, "absent some obvious repugnance to the statute, the Board's regulation[s] implementing [TILA] should be accepted by the courts." *Anderson Bros. Ford v. Valencia*, 452 U.S. 205, 219 (1981) (emphasis added).

The Court has emphasized the "high degree of deference" due the Board and held in *Ford Motor Credit Co. v. Milhollin* that the Board's and its staff's interpretations of TILA are "dispositive" unless "demonstrably irrational." 444 U.S. 555, 557, 565 (1980). While principles of administrative law require courts as a general matter to be "attentive[] to the views of the administrative entity appointed to apply and enforce a statute," the Court stated that such "deference is especially appropriate in the process of interpreting the

Truth in Lending Act." *Id.* at 565. "Because of their complexity and variety, . . . credit transactions defy exhaustive regulation by a single statute. Congress therefore delegated expansive authority to the Federal Reserve Board to elaborate and expand the legal framework governing commerce in credit." *Id.* at 559-60.

In *Milhollin*, the Court identified several reasons why FRB interpretations of TILA are entitled to a special level of deference. First, "acquiescence in administrative expertise is particularly apt under TILA because the Federal Reserve Board has played a pivotal role in setting [the statutory] machinery in motion." *Id.* at 566. *Milhollin* involved Board staff opinions interpreting TILA and Regulation Z. The degree of deference due to provisions of Regulation Z itself, promulgated after notice and public comments pursuant to the Administrative Procedure Act and delegation by Congress of "broad administrative lawmaking power" is at least as great. See, *United States v. Mead Corp.*, 533 U.S. 218, 229-30 (2001); *Christensen v. Harris County*, 529 U.S. 576, 587-88 (2000). *Milhollin* emphasized that "Congress delegated broad administrative lawmaking power to the Federal Reserve Board when it framed TILA" and that "the Act is best construed by those who gave it substance in promulgating regulations thereunder."

Second, the Court pointed to clear evidence of Congress's intent to vest broad policymaking power in the Board: "Congress has specifically designated the Federal Reserve Board and staff as the primary source for interpretation and application of truth-in-lending law. Because creditors need sure guidance through the

'highly technical' Truth in Lending Act, legislators have . . . acted to promote reliance upon Federal Reserve pronouncements." *Id.* (citation omitted). The Court noted that TILA's grant of immunity from damages for good-faith reliance on the Board's interpretations "signals an unmistakable congressional decision to treat administrative rulemaking and interpretation under TILA as authoritative." *Id.* at 567-68. "Moreover, language in the legislative history evinces a decided preference for resolving interpretive issues by uniform administrative decision, rather than piecemeal through litigation." *Id.* at 568. The Court emphasized that judges "should honor that congressional choice" and "refrain from substituting their own interstitial lawmaking for that of the Federal Reserve, so long as the latter's lawmaking is not irrational." *Id.*

Third, the Court concluded that broad "deference to the Federal Reserve is compelled by necessity; a court that tries to chart a true course to the Act's purpose embarks upon a voyage without a compass when it disregards the agency's views." *Id.* Fulfillment of TILA's goal of "meaningful disclosure" requires "striking the appropriate balance" between "complete disclosure" and "informational overload," an "empirical process that entails investigation into consumer psychology and that presupposes broad experience with credit practices." *Id.* at 568-69 (internal quotation marks and citation omitted). As the Court recognized, "administrative agencies are simply better suited than courts to engage in such a process." *Id.* at 569.[1]

---

[1] This premise of the Court's *Milhollin* decision has held true in practice. Since TILA's enactment, the Board has

C. THIRTY YEARS AGO THE FRB STATED THAT "AMOUNT" MUST BE EXPRESSED AS A DOLLAR AMOUNT.

The FRB Letter No. 469 dated April 19, 1971 (Pet. App. 82a) reads:

> No. 469
>
> "AMOUNT" OF PAYMENTS
> Sec. 226.8(b)
>
> April 19, 1971
>
> This is in reply to your letter in which you inquire whether the requirement of Section 226.8(b)(3) that the "amount" of the payments be shown is satisfied by the following statement where interest is computed on a simple interest basis:
>
> $_____ plus interest on December 10, 19__
>
> $_____ plus interest on December 10, 19__

---

undertaken numerous studies of consumer psychology and credit practices, making it particularly well-suited to identify those rules that best serve TILA's purpose of according consumers meaningful disclosure of the costs of credit. See, e.g., Marianne A. Hilgert et al., Household Financial Management: The Connection Between Knowledge and Behavior, Fed. Reserve Bull. 309 (July 2003); Thomas A. Durkin, Consumers and Credit Disclosures: Credit Cards and Credit Insurance, Fed. Reserve Bull. 201 (Apr. 2002).

> The remaining unpaid balance plus interest on December 10, 19__
>
> In the staff's view, the requirement that the creditor disclose the "amount" of the payment requires him to compute and disclose the dollar amount of each payment. Accordingly, the above quoted language would not meet the disclosure requirements of Regulation Z.
>
> Griffith L. Garwood.
> Attorney

Thus, over thirty years ago the Federal Reserve Board resolved the issue for which certiorari is sought by determining that the "amount" of payment, including specifically the last payment like the one at issue here, must be expressed as a dollar figure. See, 15 U.S.C. § 1638(a)(6) and 12 C.F.R. § 226.18(g).

On November 25, 2003 the Federal Reserve Board issued Regulation Z: Docket No. R-1167. (Pet. App. 47a-81a) These proposed additions to Regulation Z expressly included the rule that disclosure of "amount" is to be expressed as a numerical figure. In its commentary thereto, the FRB referenced this litigation and its disapproval of the decision below, stating:

> "This interpretation addresses a matter discussed in a recent court decision regarding the disclosure of payments scheduled to repay a closed-end credit transaction. *See* 15 U.S.C. § 1638(a)(6); 12

> CFR § 226.18(g). The Board believes that the decision, by endorsing narrative descriptions of amounts rather than numerical amounts, may lead to confusion in disclosures."

The FRB concluded: "A broad interpretation of the term suggesting that narrative descriptions may replace numerical "amounts" contravenes TILA's purpose to provide consumers with clear and uniform credit disclosures." (Pet. App. 53a)

The Seventh Circuit erred when it determined, in contradiction to the FRB's interpretation, "that the word 'amount' in §1638(a)(6) does not necessarily equate to 'dollar figure.'" (Pet. App. 6a)

D. SIMILAR CASE: *HOUSEHOLD CREDIT SERVS. v. PFENNIG*

The Court has granted certiorari in *Household Credit Servs. v. Pfennig*, 123 S. Ct. 2639, 156 L.Ed.2d 654 (June 27, 2003), which raises a similar question:

> Whether the Sixth Circuit improperly substituted its interpretation of the Truth in Lending Act for that of the Federal Reserve Board – the agency authorized by Congress to interpret the statute – in invalidating an important provision of Regulation Z that excludes fees imposed 'for exceeding a credit limit' (12 C.F.R. § 226.4(c)(2)) from the definition of 'finance charge' (15 U.S.C. § 1604(a)).

Household Credit Servs. v. Pfennig, 2003 U.S. Briefs 857, *1 (Aug. 18, 2003).

Because the Court currently is set to address the issue of whether courts are bound by the FRB's interpretation of TILA and the degree of deference owed to the Board and its staff, this case should be resolved in accordance with the *Pfennig* decision. Therefore, the writ of certiorari should be granted and the decision below vacated, and this case should be remand to the Seventh Circuit with instructions to reconsider its decision in light of the Court's decision in *Pfennig*.

CONCLUSION

Because respondent failed to disclose the "amount" of the irregular 13th payment to the petitioners as a dollar figure in accordance with the Federal Reserve Board's interpretation of the TILA, the judgment of the Seventh Circuit should be held pending the Court's decision in *Household Credit Servs. v. Pfennig*. Thereafter, the decision below should be disposed of in accordance with the decision in *Pfennig*.

Respectfully submitted,

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(Any footnotes trail the end of each document)

No. 02-3958

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

HARRY CARMICHAEL AND LOUISE CARMICHAEL,
Plaintiffs-Appellants,

v.

THE PAYMENT CENTER, INC.,
Defendant-Appellee.

May 28, 2003, Argued
July 17, 2003, Decided

COUNSEL: For LOUISE J. CARMICHAEL, HARRY R. CARMICHAEL, Plaintiffs - Appellants: O. Randolph Bragg, HORWITZ HORWITZ & ASSOCIATES, Chicago, IL USA.

For PAYMENT CENTER, INCORPORATED, Defendant - Appellee: Steven Shamash, John A. Leja, Riverside, IL USA.

JUDGES: Before EASTERBROOK, MANION, and KANNE, Circuit Judges.

OPINIONBY: MANION

OPINION:

MANION, Circuit Judge. Harry and Louise Carmichael sued The Payment Center, Incorporated (PCI), alleging that PCI violated the Truth in Lending Act (TILA or the Act), 15 U.S.C. § 1601, et seq., by failing to make adequate disclosures regarding their loan, and by failing to allow them the extended recision period of three years required when a creditor fails to make a material disclosure. The district court granted summary judgment, holding that PCI's disclosures were adequate under the Act and that the extended recision period was therefore unavailable to the Carmichaels. The Carmichaels appeal. Because PCI's disclosures satisfied the Act, we affirm.

I.

In March 2001, PCI lent the Carmichaels $ 69,000 for home remodeling, which they secured through a mortgage on their house. The promissory note called for a series of 12 monthly payments of $ 709.74, followed by a final balloon payment n1 of all remaining principal and interest in the 13th month, although the Carmichaels had the option of prepayment. In an effort to comply with the Act, PCI submitted a TILA statement to the Carmichaels. The statement was accurate except for two glaring errors: it greatly overstated the finance charge as $ 188,716.76, and it likewise overstated that the Carmichaels' total of payments would be $ 257,716.76. Both amounts due under the loan contract were only a fraction of the numbers listed. Despite the obvious mistakes in the TILA document, the Carmichaels made several of the $ 709.74 monthly payments to PCI. In October 2001, they then made several attempts to rescind the loan, each of which PCI rebuffed. In June 2002, after this litigation

started, the Carmichaels paid the correct balance due on the promissory note.

The Carmichaels brought suit against PCI in December 2001, alleging, in relevant part, n2 that PCI violated: (1) 15 U.S.C. § 1638(a)(6), by failing to disclose the amount of the 13th payment; (2) 15 U.S.C. § 1638(a)(4), by failing to disclose accurately the annual percentage rate (APR); and (3) 15 U.S.C. § 1635(f), by refusing to allow the Carmichaels to rescind the loan during the extended recision period of three years applicable when the creditor makes a material non-disclosure. On PCI's motion for summary judgment, the district court dismissed all three claims. The Carmichaels appeal the dismissal of the three claims.

II.

This court reviews the district court's grant of summary judgment de novo, construing all facts in favor of the nonmoving party. Rogers v. City of Chicago, 320 F.3d 748, 752 (7th Cir. 2003). Summary judgment is proper when the "pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). Thus, "summary judgment is appropriate if, on the record as a whole, a rational trier of fact could not find for the non-moving party." Rogers, 320 F.3d at 752.

The Act's main purpose is to allow consumers to compare credit rates so that they may make an informed use of credit. 15 U.S.C. § 1601(a) (2000);

Brown v. Marquette S. & L. Ass'n, 686 F.2d 608, 612 (7th Cir. 1982). Toward that end, § 1638(a)(6) requires lenders to disclose accurately the "number, amount, and due dates or period of payments scheduled to repay the total of payments." Regulation Z, which implements TILA, similarly provides that "the creditor shall disclose . . . the number, amounts, and timing of payments scheduled to repay the obligation." 12 C.F.R. § 226.18(g).

The first issue on appeal is whether PCI adhered to § 1638(a)(6)'s amount requirement regarding the 13th payment. It is undisputed that PCI's TILA document describes the 13th payment's amount as encompassing "the balance of unpaid principal and interest to be paid in full"; there is no dollar figure for the 13th payment. Therefore, we must first decide whether, as the Carmichaels maintain, only a dollar figure can satisfy § 1638(a)(6)'s amount requirement. This is an issue of first impression in this jurisdiction and, as far as we can discern, a question that none of our sister circuits has answered.

"When interpreting the meaning of a statute, we look first to the text; the text is the law, and it is the text to which we must adhere." United States ex rel. Feingold v. AdminAstar Fed., Inc., 324 F.3d 492, 495 (7th Cir. 2003). The Act's definition section does not define the term "amount." See 15 U.S.C. § 1602. Without a statutory definition, we construe the term "in accordance with its ordinary or natural meaning," a meaning which may be supplied by a dictionary. FDIC v. Meyer, 510 U.S. 471, 476, 127 L. Ed. 2d 308, 114 S. Ct. 996 (1994). Dictionaries, however, are inconclusive in this case. Some definitions of "amount" treat the word

as being synonymous with a precise number, which would favor the Carmichaels' view that the amount requirement is satisfied only where a dollar figure is provided. See, e.g., Webster's Ninth New Collegiate Dictionary 80 (1987) ("the total number or quantity"); The Compact Oxford English Dictionary 46 (1987) ("the sum of the principal and interest due upon a loan"). Other definitions of "amount" are broader, which would support PCI's position that "amount" does not necessarily equate to "dollar figure." See, e.g., id. ("the full value, effect, significance, or import"); Webster's Third New International Dictionary 72 (1981) ("the whole or final effect, significance, or import").

Regulation Z, however, shows that the broader concept of amount applies within the context of TILA. It provides that, "in a transaction in which a series of payments varies because a finance charge is applied to the unpaid principal balance, the creditor may comply with this paragraph by disclosing . . . (i) the dollar amounts of the largest and smallest payments in the series." 12 C.F.R. § 226.18(g)(2)(i) (emphasis added). This provision illustrates that "amount" does not necessarily equate to "dollar figure" within the scheme of TILA and its implementing regulations. First, the provision's use of the word "may" indicates that providing a dollar figure as to the largest and smallest payments is a permissive, instead of mandatory, means of satisfying § 1638(a)(6)'s amount requirement, see Christensen v. Harris County, 529 U.S. 576, 588, 146 L. Ed. 2d 621, 120 S. Ct. 1655 (2000), which leads unavoidably to the conclusion that there must be other ways to satisfy the requirement. The provision also implies the possibility that the dollar figures of the other payments in the series need not be given, which

leads to the same conclusion.

A statute and its implementing regulations should be read as a whole and, where possible, afforded a harmonious interpretation. See Tom Lange Co., Inc. v. A. Gagliano, Inc., 61 F.3d 1305, 1310 (7th Cir. 1995); Powell v. Heckler, 789 F.2d 176, 179 (3d Cir. 1986). We are able to apply that standard here. Although the word "amount" as contained in § 1638(a)(6) is susceptible to different definitions, Regulation Z makes clear that there are instances in which a creditor may satisfy the amount requirement without providing a dollar figure. In light of that consideration, it is safe to conclude that the word "amount" in § 1638(a)(6) does not necessarily equate to "dollar figure."

Analogous authority also weighs in favor of this interpretation. In Clay v. Johnson, 264 F.3d 744 (7th Cir. 2001), we confronted the question of whether a creditor met § 1638(a)(6)'s demand that it provide the "due dates" on which the borrower must make payments. Id. at 746. In Clay, as here, the consumers borrowed money to finance home improvements. Id. at 745. Instead of providing a specific date on which the borrowers had to make the first payment, the lender had written in its TILA disclosure that the borrowers' monthly payments would begin "30 days from completion" of the construction work. Id. at 746. The consumers sued, arguing that only an exact date on which the first payment would be due, or an estimate of the due date if a precise calendar date were unavailable, would adhere to § 1638(a)(6)'s "due dates" requirement. Id. The district court agreed with the plaintiffs and granted summary judgment on that ground. Id. We reversed, holding that, under

Regulation Z and its commentary, § 1638(a)(6)'s "due dates" requirement could be met even where the creditor provided no precise due date. Id. at 750. It was enough, instead, that the lender had provided the borrowers with the information from which they could derive the first due date for themselves. Although Clay concerned a different aspect of § 1638(a)(6) than we interpret today, and different parts of Regulation Z and its commentary, it buttresses the proposition that courts are to evaluate § 1638(a)(6)'s strictures functionally, not in formalistic manner.

Reading the Act and its implementing regulations as a whole, and in light of analogous precedent, we hold that providing a dollar figure is not the only means of adhering to § 1638(a)(6)'s amount requirement. That leads us, then, to the more fundamental question of whether the disclosure that PCI made regarding the 13th payment, although not in the form of a dollar figure, satisfied § 1638(a)(6).

A creditor's TILA disclosures must meet an objective standard, providing the relevant information in a form that a "reasonable person" would understand. Rendler v. Corus Bank, N.A., 272 F.3d 992, 999 (7th Cir. 2001). Here, a reasonable person in the Carmichaels' position would have comprehended what "the balance of unpaid principal and interest to be paid in full" meant. The loan was for $ 69,000 at an APR of 12%. The loan called for 12 monthly payments of a minimum of $ 709.74 each, which adds to $ 8,516.88 over the course of a year. Thus, a reasonable consumer who paid the minimum payments n3 for the first twelve months would have known that the first twelve payments would cover mostly interest, and that the 13th payment would be

slightly less than the principal loan of $ 69,000, which is what one would expect to be the case for a construction loan with a balloon payment. See generally Marianne Moody Jennings, Real Estate Law 579 (5th ed. 1999). Had he, or someone on his behalf, made the calculations, our reasonable consumer could have learned that the precise number was $ 68,727.37. In short, this case is an example of how the amount requirement can be satisfied by providing a method that would enable a reasonable consumer to calculate the dollar figure of a final payment where the dollar figure of that final payment depends on the actual payments the consumer had made beforehand.

The Carmichaels disagree, contending that because the reasonable consumer is "left to guess the amount of the 13th payment," he "could easily assume the 13th payment to be $ 249,199.88, e.g. -- subtracting 12 monthly payments of $ 709.74 each ($ 8,516.88) from the total of payments of $ 257,716.76 ($ 257,716.76 - $ 8516.88 = $ 249,199.88)." We do not subscribe to that point of view. Such an "easy" assumption would be ridiculous where, as here, the original loan was for $69,000.

Aside from that obvious defect, there is another fundamental flaw in the Carmichaels' position. The Carmichaels are essentially saying that PCI violated § 1638(a)(6) because, by grossly overstating the total of payments, PCI insinuated that the 13th payment was far larger than actually was the case. PCI, relying upon 15 U.S.C. § 1605(f)(1)(B), argues that TILA immunizes creditors from liability under the Act where, as here, they overstate a disclosure affected by a finance charge. Section 1605(f)(1)(B), through which Congress amended

the Act in 1995, provides as follows:

> In connection with credit transactions not under an open end credit plan that are secured by real property or a dwelling, the disclosure of the finance charge and other disclosures affected by any finance charge--
>
> (1) shall be treated as being accurate for purposes of this subchapter if the amount disclosed as the finance charge- . . .
>
> (B) is greater than the amount required to be disclosed under this subchapter . . .

15 U.S.C. § 1605(f)(1)(B) (emphasis added).

Theoretically, the $ 257,716.76 total-of-payments figure, although patently incorrect, was "affected by any finance charge," because it corresponds to the addition of the $ 69,000 principal to the inaccurately listed finance charge of $ 188,716.76. Therefore, the $ 249,199.88 amount of the 13th payment that, the Carmichaels argue, derives from the total-of-payments number was itself "affected by [the overstated] finance charge" and, pursuant to § 1605(f)(1)(B), must be "treated as being accurate." Thus, even after drawing all factual inferences in the Carmichaels' favor, we hold that there is no genuine issue of fact as to the Carmichaels' claim under § 1638(a)(6). The Act protects consumers only when the stated amount is less than the amount required to be disclosed.

We turn now to the Carmichaels' second claim: that PCI violated § 1638(a)(4), which requires creditors accurately to disclose the contractual APR. To be

accurate, such a disclosure must "reflect the terms of the legal obligation between the parties," which, of course, derive from the loan contract. Janikowski v. Lynch Ford, Inc., 210 F.3d 765, 767 (7th Cir. 2000) (quoting 12 C.F.R. § 226.17(c)(1)). Here, the loan contract was the parties' promissory note, which required the Carmichaels to pay an APR of 12%. It would therefore seem obvious that the 12% APR listed on the TILA document was accurate and that PCI is not liable under § 1638(a)(4).

The Carmichaels' position, nonetheless, is that the APR should be calculated not from the loan contract, but should be "based on [PCI's] disclosed Finance Charge of $ 188,716.76, [the] Amount Financed of $ 69,000, 12 monthly payments of $ 709.74 each and a 13th installment of the remaining balance," which equates to an APR of "130.7721 percent." Because PCI did not list an APR of 130.7721% on the TILA document, so the argument goes, it violated § 1638(a)(4). This contention is incorrect because it ignores the fundamental point that the terms of the contract dictate the TILA disclosure, not vice versa. See id.

In their reply brief, the Carmichaels try a different approach, arguing for the first time that "the APR is impossible to calculate." Because they have waited until this juncture to contend that no calculation of the APR is possible, that argument is waived. See, e.g., James v. Sheahan, 137 F.3d 1003, 1008 (7th Cir. 1998). Moreover, to the extent that the Carmichaels' argument might be construed to imply that the creditor overstated the APR, the Carmichaels still would lose. The APR is a disclosure affected by the finance charge. Wepsic v. Josephson (In re Wepsic), 231 B.R. 768, 773 (Bankr.

S.D. Cal. 1998). Therefore, where the APR is overstated, § 1605(f)(1)(B) immunizes a creditor from liability for that technical inaccuracy. Alicea v. Citifinancial Servs., Inc., 210 F. Supp. 2d 4, 7-8 (D. Mass. 2002); Wepsic, 231 B.R. at 772-73. Even where the overstatement is so obviously an error (to everyone except the Carmichaels), they cannot prove that PCI violated § 1638(a)(4).

The Carmichaels' final argument on appeal is that they were entitled to an extended period of recision under § 1635(f). The Act provides that a consumer may rescind, inter alia, a consumer credit transaction in which the creditor retains a security interest on the consumer's home. In the typical case, this right extends until the third business day after the later of two dates: the date on which the parties consummate the transaction, or the date on which disclosure and recision forms are delivered to the consumer. 15 U.S.C. § 1635(a). If, however, the creditor fails to deliver the forms, or fails to provide the required information, the right to rescind extends for three years after the transaction's consummation. Id. § 1635(f); 12 C.F.R. § 226.23(a)(3); Smith v. Highland Bank, 108 F.3d 1325, 1326 (11th Cir. 1997).

The Carmichaels base their right to the three-year recision period on the contention that PCI failed to provide the information that § § 1638(a)(4) and (a)(6) require. Because we have held as a matter of law that PCI did provide the requisite information, it follows that the Carmichaels were not entitled to the extended recision period of § 1635(f).

III.

We affirm summary judgment in favor of PCI.

FOOTNOTES

n1 "A balloon payment results if paying the minimum periodic payments does not fully amortize the outstanding balance by a specified date or time, and the consumer must repay the entire outstanding balance at such time." 12 C.F.R. § 226.5b(d)(5)(1) n.10b (2003).

n2 The district court dismissed all other claims on the Carmichaels' motion.

n3 Under the loan's terms, the Carmichaels were allowed to make higher payments in any given month. Had they done so, the 13th payment would have been correspondingly reduced or even eliminated.

No. 01 C 9392

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

HARRY CARMICHAEL, et al.,
Plaintiffs,

v.

PAYMENT CENTER, INC.,
Defendant.

September 27, 2002, Decided
September 30, 2002, Docketed

COUNSEL: For HARRY CARMICHAEL, LOUIS CARMICHAEL, plaintiffs: O. Randolph Bragg, Horwitz, Horwitz & Associates, Chicago, IL.

For HARRY CARMICHAEL, LOUIS CARMICHAEL, plaintiffs: Adam Martin Mergenthaler, Horowitz & Horowitz, Chicago, IL.

For PAYMENT CENTER, INC., defendant: Steven R. Shamash, Riverside, IL.

For PAYMENT CENTER, INC., counter-claimant: Steven R. Shamash, Riverside, IL.

For HARRY CARMICHAEL, LOUIS CARMICHAEL, counter-defendants: O. Randolph Bragg, Horwitz, Horwitz & Associates, Chicago, IL.

For HARRY CARMICHAEL, LOUIS CARMICHAEL, counter-defendants: Adam Martin Mergenthaler, Horowitz & Horowitz, Chicago, IL.

JUDGES: Milton I. Shadur, Senior United States District Judge.

OPINIONBY: Milton I. Shadur

OPINION:

MEMORANDUM OPINION AND ORDER

Harry and Louise Carmichael (collectively "Carmichaels") and Payment Center, Inc. ("Payment Center") have filed cross-motions with supporting and responsive memoranda under Fed. R. Civ. P. ("Rule") 16, each side seeking to narrow the issues in this Truth in Lending Act ("TILA") n1 action brought by Carmichaels in consequence of Payment Center's having made them a short-term loan secured by a second mortgage on their Oak Park residence. Those cross-efforts appear to have demonstrated that this is a lawsuit that should never have been brought, given the objective good faith standard that is imposed on every lawyer and litigant under Rule 11(b).

In March 2001 Carmichaels negotiated a $ 69,000 loan transaction with Payment Center--secured (as already indicated) by a junior mortgage on their residence--to provide them with funds to pay off the contractor for the home's major remodeling. What the loan documents called for were 12 monthly payments of $ 709.74 each (that is the monthly amount that would have been required to self-amortize a 30-year loan at the agreed

annual interest rate of 12%), with each such payment to be applied first to accrued interest and then toward principal, and then with a balloon payment at the end of the 13th month comprising the last month's interest and all remaining principal "if not sooner paid." But when the Truth-in-Lending Disclosures document was prepared by one of Payment Center's people and delivered to Carmichaels at the closing, it contained the vastly (and clearly) erroneous figure of $ 188,716.76 under the "FINANCE CHARGE" heading. That mistake, a patent absurdity in such a short-term loan transaction, escaped everyone's attention at the closing. n2 At that time Carmichaels simply signed the printed Truth-in-Lending disclosures form that contained that erroneous entry.

Now however they seek to use that obvious mistake as the basis for reaching into Payment Center's corporate pocket to the tune of $ 8,331.43 in "actual damages" (1), $ 2,000 in statutory damages because of Payment Center's asserted failure to provide accurate disclosures and $ 2,000 in statutory damages for Payment Center's failure to honor Carmichaels' purported rescission well after the fact, plus costs and attorneys' fees. That level of greed would seem to call into play a variant on the old saying in the stock market investment field that "bulls may make money and bears may make money, but it's hogs who should get slaughtered."

Unlike the Fair Debt Collection Practices Act standard that measures the adequacy of disclosures in terms of the highly "unsophisticated reader" (see, e.g., Johnson v. Revenue Mgmt. Corp., 169 F.3d 1057, 1060 (7th Cir. 1999)), TILA prescribes an objective "reasonable

person" approach (see, e.g., Rendler v. Corus Bank, N.A., 272 F.3d 992, 999 (7th Cir. 2001); Smith v. Check-N-Go of Ill., Inc., 200 F.3d 511, 515 (7th Cir. 1999)). In this case it is apparent that any reasonable person (indeed, even an unsophisticated one) who looked at the assertedly offending disclosure document would have had to recognize immediately that the boxcar number listed as "finance charges" was the product of some kind of mathematical mistake--and it is worth noting parenthetically that Harry Carmichael has a bachelor's degree in electrical engineering and computer science, while Louise Carmichael has an associate's degree in business administration! Even if the mistaken disclosure had constituted a technical TILA violation, then, its obviousness to any reasonable reader (to say nothing of the college-educated Carmichaels) would have negated any concept of detrimental reliance.

But there is far more. TILA itself actually negates such an overstatement of finance charges as constituting an inaccuracy for statutory purposes--here is Section 1605(f)(1)(B)(emphasis added) (a provision reconfirmed by the implementing Regulation Z, 12 C.F.R. § 226.23(g)(1)(ii)):

In connection with credit transactions not under an open end credit plan that are secured by real property or a dwelling, the disclosure of the finance charge and other disclosures affected by any finance charge—

(1) shall be treated as being accurate for purposes of this subchapter if the amount disclosed as the finance charge—

(B) is greater than the amount required to be disclosed

under this subchapter.

In fact the actual finance charges paid by Carmichaels came to less than $ 6,000 (precisely $ 5,994.80), n3 so that their total payments of principal plus those finance charges were just under $ 75,000 rather than the patently incorrect listed figure of more than a quarter million dollars. That being so, TILA expressly provides that "the disclosure of the finance charge and other disclosures affected by any finance charge. . .shall be treated as being accurate"--and that torpedoes Carmichaels' TILA claim. n4 And relatedly, it is equally absurd for Carmichaels to attempt to pyramid on the obviously mistaken finance charges figure to calculate a purported Annual Percentage Rate of 130.7721% on the loan, rather than the 12% rate accurately disclosed by Payment Center and actually charged during the short life of the loan.

Carmichaels advance one added complaint: They cavil at the loan documents' language, which was mirrored in the TILA disclosure statement, that attached no numerical value to the 13th and last payment. As already indicated, the loan documents spoke of paying "the balance of all unpaid principal and interest" at that time, while the Truth-in-Lending Disclosures statement similarly referred to "the 13th installment of all remaining principal balance." In that respect, it should be remembered that there was no prohibition against prepayment in part or in full by Carmichaels if they so chose--as already stated, the mortgage referred to the last payment as being "of all principal and interest, if not sooner paid" (emphasis added). As n. 3 reflects, that was not just a hypothetical possibility, for Carmichaels in fact exercised that privilege by making

a substantial prepayment of $ 45,000.

In that sense, then, it was not possible to state in advance an absolutely firm figure for the last payment. It is true that Section 1638(a)'s lengthy list of required disclosures by a creditor (lender) include, as subparagraph (a)(6), "the number, amount, and due dates or period of payments scheduled to repay the total of payments." In this instance Payment Center complied with that requirement in all respects--with the argued-for possible exception that the balloon payment was expressed in words, rather than in terms of a then-unknown dollar figure. In terms of the loan transaction at issue here, this Court cannot conscientiously treat that as a TILA violation that might trigger a totally unwarranted sanction on Payment Center.

That then would appear to negate any violation of TILA and, in turn, to wash out Carmichaels' claims in their entirety. Absent a violation, no violation-related "actual damages" may be asserted, and the assessment of statutory damages would be an oxymoron.

Before this opinion turns from Carmichaels' rejected claim of "actual damages," note should be taken of the especially egregious nature of one aspect of that claim. As Carmichaels would have it, they were "forced to refinance their home twice as a result of the Loan with the Payment Center, Inc." (Carmichaels Statement of Material Facts P20). First they refinanced for $ 234,000 in May 2001, just two months after the borrowing from Payment Center, to pay off their existing first mortgage of some $ 117,000 (id. PP21-23 and Ex. J). Then a year later, in June of this year, they obtained

new refinancing for $ 279,500 (id. PP24-26 and Ex. K), no doubt to take advantage of the ongoing decline in interest rates. Those refinancings, they say, occasioned closing costs (nearly $ 10,000 the first time, nearly $ 5,000 the second), of which they contend a portion should be borne by Payment Center.

Just to state that claim betrays its outrageousness. There is of course no question from the very nature of the Payment Center loan--small monthly payments for a year, then a total payoff a month later--that it represented interim and not long-term financing. That is not only a matter of common sense but is confirmed by the fact that the entire net loan proceeds of $ 68,700 obtained from Payment Center were paid to the contractor who was remodeling Carmichaels' home. And the natural consequence of that, with Carmichaels having opted for a short-term second mortgage loan from Payment Center, had to be an overall refinancing (unless Carmichaels were somehow to have come into that kind of money from some other source--maybe winning the lottery?). It is a serious misrepresentation for Carmichaels and their counsel to assert that the necessary refinancing was somehow caused by the terms of the Payment Center loan or by any of its disclosures in connection with that loan--their need for refinancing was instead caused (forced?) by Carmichaels themselves, by their having chosen to take out a short term loan for their convenience in the first place.

Indeed, perhaps the height of irony lies in Carmichaels' effort to emphasize the purpose of TILA "to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the

various credit terms available to him and avoid the uninformed use of credit" (Section 1601(a), quoted at Carmichaels' Mem. 4). But Carmichaels never assert that they would have shopped the Payment Center loan elsewhere, even in the face of their being told (erroneously) that they were going to pay over $ 188,000 in finance charges on a 13-month $ 69,000 loan. Moreover, Carmichaels actually paid Payment Center only $ 300 in processing fees, receiving fully $ 68,700 out of the $ 69,000 loan with which they were able to pay off their remodeling contractor. By contrast, when they then quickly negotiated the first long-term loan (what they label as "refinancing") to pay off their first mortgage (and not Payment Center's second mortgage), they paid almost $ 5,000 in the aggregate for a 1% loan discount, an appraisal fee, the first mortgagee's "administration fee" and the mortgage brokers' "origination" and "processing" fees. Then Carmichaels' second long-term loan, as already stated, cost them almost another $ 5,000 in closing costs. On further thought, it is really more accurate to label as chutzpah rather than irony the attempt by Carmichaels and their lawyers to shift any part of the burden of their self-created and self-imposed costs on a lender that had accommodated their need to pay off their remodeling contractor (eliminating any possibility of contractors' liens or other such difficulties) while they bought time to shop for permanent financing at their convenience.

Finally, a few words may be said as to Carmichaels' final claim as originally posed in their Complaint: that seeking rescission of the Payment Credit loan. Once again the non-TILA-violative conduct on the part of Payment Center would also seem to have scotched

Carmichaels' second-guessing and belated effort at such rescission. But that need not be decided, for although Carmichaels' Response Mem. 3-5 initially challenges Payment Center's contention that Carmichaels rescission claim in Complaint PP23-30 has been mooted because the loan has been paid off and the Payment Center mortgage released of record, that discussion concludes with this statement (id. at 5):

The Carmichaels no longer seek rescission of the loan per se, nevertheless because PCI failed to timely rescind and the Carmichaels are entitled to an award of actual and statutory damages.

Accordingly both Carmichaels' rescission claim and Payment Center's Countercomplaint seeking foreclosure of the mortgage (concededly rendered moot by payment and release) are dismissed from this action.

Conclusion

TILA is a consumer-oriented statute with a worthwhile social goal: to provide those who must borrow money with the kind of information they need to make informed decisions. Despite the commendable nature of that statutory purpose (or regrettably, sometimes because of that very purpose), TILA is often made the target of critics who attack it on various grounds--sometimes including the premise that it promotes the institution of overly burdensome claims and lawsuits. It is particularly regrettable, then, to encounter a lawsuit such as this one, which is so extreme a distortion of TILA's goals as to provide fuel for TILA's critics and thus to endanger its salutary existence.

This opinion's initial paragraph has referred advisedly to the standards imposed by Rule 11(b) on both litigants and their lawyers. At the next status hearing in this action, which this opinion schedules for 9 a.m. October 10, 2002, counsel for the parties should come prepared to discuss not only (1) what remains of this lawsuit (and the appropriate road towards its resolution) but also (2) the possible appropriateness of the imposition of sanctions pursuant to Rule 11(c)(1)(B).

Milton I. Shadur
Senior United States District Judge

Date: September 27, 2002

FOOTNOTES

n1 All citations to TILA's provisions will take the form "Section --," referring to the statutory numbering in Title 15 rather than to TILA's internal numbering.

n2 Could anyone who had troubled to look at the numbers have really believed that the finance charges for a one year and one month loan at 12% interest would have come to over 270% of the principal sum being borrowed? Ridiculous. That figure would have been correct if the loan had indeed been self-amortizing over a full 30-year term, for in that event the loan payments "on schedule" would have added up to $ 257,716.76 (representing $ 69,000 in principal payments plus 360 interest payments aggregating the $ 188,000-plus figure). It would seem most likely that a careless punching of the wrong button on the computer, or some other comparable error by a clerical person, created the mistaken entry--but the cause of the mistake is really

irrelevant here under the circumstances, although its obviously accidental nature might play a part in determining the appropriate amount of penalty if one were called for (as it surely is not).

n3 That smaller amount was attributable to Carmichaels having availed themselves of the opportunity to make a very substantial prepayment, rather than limiting themselves to the loan documents' scheduled monthly payments. More on this subject later.

n4 Carmichaels' attempted response on this issue is just as bogus as the other arguments addressed here. Its counsel points to (and even emphasizes) the provisions of Section 1605(f)(2)(A), to which Payment Center's obviously mistaken overstatement of finance charges does not conform. But that contention, and a fortiori that emphasis, are totally unsupportable. By its terms Section 1605(f)(1) identifies any mistaken disclosures "as being accurate for purposes of this subchapter" (which comprises all of Sections 1601 through 1667f) if that subsection's condition is satisfied, as it is in this case. That then creates total excusability for all TILA purposes. By contrast, Section 1605(f)(2) identifies a special concept of "accuracy" for only one TILA section--Section 1635, which deals only with a borrower's rescission remedy--if its condition is satisfied. If counsel's position that those requirements are to be treated as inextricably linked rather than as independent (as they clearly are) were to be credited, a lender could equally urge that no rescission could be obtained by the borrower if the lender's finance charge disclosure stated a figure less than what TILA required--a truly bizarre notion. In short, Carmichaels'

counsel are flat-out wrong.

No 02-3958

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Harry Carmichael and Louise Carmichael,
Plaintiffs-Appellants,

v.

The Payment Center, Inc.,
Defendant-Appellee.

October 6, 2003, Decided

COUNSEL: For LOUISE J. CARMICHAEL, HARRY R. CARMICHAEL, Plaintiffs - Appellants: O. Randolph Bragg, HORWITZ HORWITZ & ASSOCIATES, Chicago, IL USA.

For PAYMENT CENTER, INCORPORATED, Defendant - Appellee: Steven Shamash, John A. Leja, Riverside, IL USA.

JUDGES: Before Hon. Frank H. Easterbrook, Circuit Judge, Hon. Daniel A. Manion, Circuit Judge, Hon. Michael S. Kanne, Circuit Judge.

OPINION:

ORDER

On consideration of the petition for rehearing en banc filed by plaintiffs-appellants, and the answer thereto, no judge in active service has requested a vote on the

petition for rehearing en banc, and all of the judges on the original panel have voted to deny rehearing. The petition is therefore DENIED.

No. 02-3958

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

HARRY R. CARMICHAEL and LOUISE J. CARMICHAEL,
Plaintiffs-Appellants,

v.

PAYMENT CENTER, INCORPORATED,
Defendant-Appellee.

August 15, 2003

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
No. 01 C 9392
Milton I. Shadur, Judge.

Before: Hon. DANIEL A. MANION, Circuit Judge

The following are before the court:

1. MOTION FOR LEAVE TO FILE A BRIEF AMICUS CURIAE IN SUPPORT OF APPELLANTS' PETITION FOR REHEARING EN BANC AND FOR WORD COUNT AND TIME EXTENSIONS, filed on July 31, 2003, by counsel for AARP.

2. AMENDED MOTION FOR LEAVE TO FILE A BRIEF AMICUS CURIAE IN SUPPORT OF APPELLANTS' PETITION FOR REHEARING EN

BANC AND FOR WORD EXPANSION, filed on August 14, 2003, by counsel for AARP.

IT IS ORDERED that the motions are DENIED. The clerk shall return the tendered briefs to counsel for AAPR.

No. 01 C 9392

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

HARRY CARMICHAEL, et al.,
Plaintiffs,

v.

PAYMENT CENTER, INC.,
Defendant.

January 29, 2002, Decided
January 30, 2002, Docketed

COUNSEL: For HARRY CARMICHAEL, LOUIS CARMICHAEL, plaintiffs: O. Randolph Bragg, Horwitz, Horwitz & Associates, Adam Martin Mergenthaler, Horowitz & Horowitz, Chicago, IL.

For PAYMENT CENTER, INC., defendant: Steven R. Shamash, Riverside, IL.

For PAYMENT CENTER, INC., counter-claimant: Steven R. Shamash, Riverside, IL.

For HARRY CARMICHAEL, LOUIS CARMICHAEL, counter-defendants: O. Randolph Bragg, Horwitz, Horwitz & Associates, Adam Martin Mergenthaler, Horowitz & Horowitz, Chicago, IL.

JUDGES: Milton I. Shadur, Senior United States District Judge.

OPINIONBY: Milton I. Shadur

OPINION:

MEMORANDUM

Harry and Louise Carmichael (collectively "Carmichaels") have served a notice of their counsel's proposed February 12, 2002 presentment of a motion to dismiss the mortgage foreclosure counterclaim brought against them in this Truth in Lending Act action against Payment Center, Inc. ("Payment Center"). Because it appears that Carmichaels' counsel has misapprehended the current posture of Seventh Circuit law in that respect, this memorandum is issued sua sponte to alert both sides' counsel as to the issue to be addressed at the scheduled date of presentment.

In part Carmichaels' Brief in support of their motion points to Valencia v. Anderson Bros. Ford, 617 F.2d 1278, 1290-92 (7th Cir. 1980) and to some district court decisions as barring the exercise of federal jurisdiction over the counterclaim (which is a state law claim between nondiverse parties). But that contention ignores the impact of Channell v. Citicorp Nat'l Servs., Inc., 89 F.3d 379, 384-87 (7th Cir. 1996), n1 which teaches that the supplemental jurisdiction provisions of 28 U.S.C. § 1367 ("Section 1367") have changed the legal landscape announced in Valencia by supplanting the former compulsory counterclaim test under Fed. R. Civ. P. 13(a) with a less demanding requirement that the counterclaim be "so related to claims in the action within original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution"--as to which requirement

Channell, 89 F.3d at 385 has reconfirmed:

In Baer v. First Options of Chicago, Inc., 72 F.3d 1294, 1298-1301 (7th Cir. 1995), we concluded that § 1367 has extended the scope of supplemental jurisdiction, as the statute's language says, to the limits of Article III--which means that "[a] loose factual connection between the claims" can be enough, quoting from Ammerman v. Sween, 54 F.3d 423, 424 (7th Cir. 1995).

Accordingly the relevant inquiry would appear to be not whether supplemental jurisdiction exists over Payment Center's counterclaim under Section 1367 (a), but rather whether this is an appropriate case for the declination of such jurisdiction under either Section 1367(c)(2) or (4). Carmichaels' counsel are oversimplistic in urging that just because Carmichaels claim to have rescinded the credit agreement at issue, Payment Center's foreclosure effort via its counterclaim "refuses to honor plaintiffs' statutorily-prescribed rights, an act which sounds in bad faith in disrespect to this court and the tenants [sic] of the TILA." After all, Payment Center disputes the validity of Carmichaels' attempted rescission--and if no valid rescission took place, Payment Center is entitled to pursue its own rights and remedies (including foreclosure). As stated earlier, both sides' lawyers should come to the motion presentment date prepared to dismiss the matter in those terms.

Milton I. Shadur
Senior United States District Judge

Date: January 29, 2002

FOOTNOTES

n1 It is not as though Carmichaels' counsel were unaware of Channell, which is actually cited in the supporting Brief.

12 CFR 226.18

Sec. 226.18 Content of disclosures.

For each transaction, the creditor shall disclose the following information as applicable:

(a) Creditor. The identity of the creditor making the disclosures.

(b) Amount financed. The amount financed, using that term, and a brief description such as the amount of credit provided to you or on your behalf. The amount financed is calculated by:

(1) Determining the principal loan amount or the cash price (subtracting any downpayment);

(2) Adding any other amounts that are financed by the creditor and are not part of the finance charge; and

(3) Subtracting any prepaid finance charge.

(c) Itemization of amount financed. (1) A separate written itemization of the amount financed, including: n40

(i) The amount of any proceeds distributed directly to the consumer.

(ii) The amount credited to the consumer's account with the creditor.

(iii) Any amounts paid to other persons by the creditor on the consumer's behalf. The creditor shall

identify those persons. n41

(iv) The prepaid finance charge.

(2) The creditor need not comply with paragraph (c)(1) of this section if the creditor provides a statement that the consumer has the right to receive a written itemization of the amount financed, together with a space for the consumer to indicate whether it is desired, and the consumer does not request it.

(d) Finance charge. The finance charge, using that term, and a brief description such as "the dollar amount the credit will cost you.'"

(1) Mortgage loans. In a transaction secured by real property or a dwelling, the disclosed finance charge and other disclosures affected by the disclosed finance charge (including the amount financed and the annual percentage rate) shall be treated as accurate if the amount disclosed as the finance charge:

(i) Is understated by no more than $100; or

(ii) Is greater than the amount required to be disclosed.

(2) Other credit. In any other transaction, the amount disclosed as the finance charge shall be treated as accurate if, in a transaction involving an amount financed of $1,000 or less, it is not more than $5 above or below the amount required to be disclosed; or, in a transaction involving an amount financed of more than $1,000, it is not more than $10 above or below the amount required to be disclosed.

(e) Annual percentage rate. The annual percentage rate, using that term, and a brief description such as "the cost of your credit as a yearly rate." n42

(f) Variable rate. (1) If the annual percentage rate may increase after consummation in a transaction not secured by the consumer's principal dwelling or in a transaction secured by the consumer's principal dwelling with a term of one year or less, the following disclosures: n43

(i) The circumstances under which the rate may increase.

(ii) Any limitations on the increase.

(iii) The effect of an increase.

(iv) An example of the payment terms that would result from an increase.

(2) If the annual percentage rate may increase after consummation in a transaction secured by the consumer's principal dwelling with a term greater than one year, the following disclosures:

(i) The fact that the transaction contains a variable-rate feature.

(ii) A statement that variable-rate disclosures have been provided earlier.

(g) Payment schedule. The number, amounts, and timing of payments scheduled to repay the obligation.

(1) In a demand obligation with no alternate maturity

date, the creditor may comply with this paragraph by disclosing the due dates or payment periods of any scheduled interest payments for the first year.

(2) In a transaction in which a series of payments varies because a finance charge is applied to the unpaid principal balance, the creditor may comply with this paragraph by disclosing the following information:

(i) The dollar amounts of the largest and smallest payments in the series.

(ii) A reference to the variations in the other payments in the series.

(h) Total of payments. The total of payments, using that term, and a descriptive explanation such as "the amount you will have paid when you have made all scheduled payments." n44

(i) Demand feature. If the obligation has a demand feature, that fact shall be disclosed. When the disclosures are based on an assumed maturity of 1 year as provided in Sec. 226.17(c)(5), that fact shall also be disclosed.

(j) Total sale price. In a credit sale, the total sale price, using that term, and a descriptive explanation (including the amount of any downpayment) such as "the total price of your purchase on credit, including your downpayment of $----." The total sale price is the sum of the cash price, the items described in paragraph (b)(2), and the finance charge disclosed under paragraph (d) of this section.

(k) Prepayment. (1) When an obligation includes a finance charge computed from time to time by application of a rate to the unpaid principal balance, a statement indicating whether or not a penalty may be imposed if the obligation is prepaid in full.

(2) When an obligation includes a finance charge other than the finance charge described in paragraph (k)(1) of this section, a statement indicating whether or not the consumer is entitled to a rebate of any finance charge if the obligation is prepaid in full.

(l) Late payment. Any dollar or percentage charge that may be imposed before maturity due to a late payment, other than a deferral or extension charge.

(m) Security interest. The fact that the creditor has or will acquire a security interest in the property purchased as part of the transaction, or in other property identified by item or type.

(n) Insurance and debt cancellation. The items required by Sec. 226.4(d) in order to exclude certain insurance premiums and debt cancellation fees from the finance charge.

(o) Certain security interest charges. The disclosures required by Sec. 226.4(e) in order to exclude from the finance charge certain fees prescribed by law or certain premiums for insurance in lieu of perfecting a security interest.

(p) Contract reference. A statement that the consumer should refer to the appropriate contract document for information about nonpayment, default, the right to accelerate the maturity of the obligation,

and prepayment rebates and penalties. At the creditor's option, the statement may also include a reference to the contract for further information about security interests and, in a residential mortgage transaction, about the creditor's policy regarding assumption of the obligation.

(q) Assumption policy. In a residential mortgage transaction, a statement whether or not a subsequent purchaser of the dwelling from the consumer may be permitted to assume the remaining obligation on its original terms.

(r) Required deposit. If the creditor requires the consumer to maintain a deposit as a condition of the specific transaction, a statement that the annual percentage rate does not reflect the effect of the required deposit. n45

FOOTNOTES

n40 Good faith estimates of settlement costs provided for transactions subject to the Real Estate Settlement Procedures Act (12 U.S.C. 2601 et seq.) may be substituted for the disclosures required by paragraph (c) of this section.

n41 The following payees may be described using generic or other general terms and need not be further identified: public officials or government agencies, credit reporting agencies, appraisers, and insurance companies.

n42 For any transaction involving a finance charge of $5 or less on an amount financed of $75 or less, or a finance

charge of $7.50 or less on an amount financed of more than $75, the creditor need not disclose the annual percentage rate.

n43Information provided in accordance with Secs. 226.18(f)(2) and 226.19(b) may be substituted for the disclosures required by paragraph (f)(1) of this section.

n44 In any transaction involving a single payment, the creditor need not disclose the total of payments.

n45 A required deposit need not include, for example: (1) An escrow account for items such as taxes, insurance or repairs; (2) a deposit that earns not less than 5 percent per year; or (3) payments under a Morris Plan.

15 USCS § 1638 (2003)

§ 1638. Transactions other than under an open end credit plan.

(a) Required disclosures by creditor. For each consumer credit transaction other than under an open end credit plan, the creditor shall disclose each of the following items, to the extent applicable:

(1) The identity of the creditor required to make disclosure.

(2)(A) The "amount financed", using that term, which shall be the amount of credit of which the consumer has actual use. This amount shall be computed as follows, but the computations need not be disclosed and shall not be disclosed with the disclosures conspicuously segregated in accordance with subsection (b)(1) of this section:

(i) take the principal amount of the loan or the cash price less downpayment and trade-in;

(ii) add any charges which are not part of the finance charge or of the principal amount of the loan and which are financed by the consumer, including the cost of any items excluded from the finance charge pursuant to section 1605 of this title; and

(iii) subtract any charges which are part of the finance charge but which will be paid by the consumer before or at the time of the consummation of the transaction, or have been withheld from the proceeds of the credit.

(B) In conjunction with the disclosure of the amount financed, a creditor shall provide a statement of the consumer's right to obtain, upon a written request, a written itemization of the amount financed. The statement shall include spaces for a "yes" and "no" indication to be initialed by the consumer to indicate whether the consumer wants a written itemization of the amount financed. Upon receiving an affirmative indication, the creditor shall provide, at the time other disclosures are required to be furnished, a written itemization of the amount financed. For the purposes of this subparagraph, "itemization of the amount financed" means a disclosure of the following items, to the extent applicable:

(i) the amount that is or will be paid directly to the consumer;

(ii) the amount that is or will be credited to the consumer's account to discharge obligations owed to the creditor;

(iii) each amount that is or will be paid to third persons by the creditor on the consumer's behalf, together with an identification of or reference to the third person; and

(iv) the total amount of any charges described in the preceding subparagraph (A)(iii).

(3) The "finance charge", not itemized, using that term.

(4) The finance charge expressed as an "annual percentage rate", using that term. This shall not be

required if the amount financed does not exceed $75 and the finance charge does not exceed $5, or if the amount financed exceeds $75 and the finance charge does not exceed $7.50.

(5) The sum of the amount financed and the finance charge, which shall be termed the "total of payments".

(6) The number, amount, and due dates or period of payments scheduled to repay the total of payments.

(7) In a sale of property or services in which the seller is the creditor required to disclose pursuant to section 1631(b) of this title, the "total sale price", using that term, which shall be the total of the cash price of the property or services, additional charges, and the finance charge.

(8) Descriptive explanations of the terms "amount financed", "finance charge", "annual percentage rate", "total of payments", and "total sale price" as specified by the Board. The descriptive explanation of "total sale price" shall include reference to the amount of the downpayment.

(9) Where the credit is secured, a statement that a security interest has been taken in (A) the property which is purchased as part of the credit transaction, or (B) property not purchased as part of the credit transaction identified by item or type.

(10) Any dollar charge or percentage amount which may be imposed by a creditor solely on account of a late payment, other than a deferral or extension charge.

(11) A statement indicating whether or not the

consumer is entitled to a rebate of any finance charge upon refinancing or prepayment in full pursuant to acceleration or otherwise, if the obligation involves a precomputed finance charge. A statement indicating whether or not a penalty will be imposed in those same circumstances if the obligation involves a finance charge computed from time to time by application of a rate to the unpaid principal balance.

(12) A statement that the consumer should refer to the appropriate contract document for any information such document provides about nonpayment, default, the right to accelerate the maturity of the debt, and prepayment rebates and penalties.

(13) In any residential mortgage transaction, a statement indicating whether a subsequent purchaser or assignee of the consumer may assume the debt obligation on its original terms and conditions.

(14) In the case of any variable interest rate residential mortgage transaction, in disclosures provided at application as prescribed by the Board for a variable rate transaction secured by the consumer's principal dwelling, at the option of the creditor, a statement that the periodic payments may increase or decrease substantially, and the maximum interest rate and payment for a $10,000 loan originated at a recent interest rate, as determined by the Board, assuming the maximum periodic increases in rates and payments under the program, or a historical example illustrating the effects of interest rate changes implemented according to the loan program.

(b) Form and timing of disclosures; residential

mortgage transaction requirements

(1) Except as otherwise provided in this part, the disclosures required under subsection (a) of this section shall be made before the credit is extended. Except for the disclosures required by subsection (a)(1) of this section, all disclosures required under subsection (a) of this section and any disclosure provided for in subsection (b), (c), or (d) of section 1605 of this title shall be conspicuously segregated from all other terms, data, or information provided in connection with a transaction, including any computations or itemization.

(2) In the case of a residential mortgage transaction, as defined in section 1602(w) of this title, which is also subject to the Real Estate Settlement Procedures Act (12 U.S.C. 2601 et seq.), good faith estimates of the disclosures required under subsection (a) of this section shall be made in accordance with regulations of the Board under section 1631(c) of this title before the credit is extended, or shall be delivered or placed in the mail not later than three business days after the creditor receives the consumer's written application, which ever is earlier. If the disclosure statement furnished within three days of the written application contains an annual percentage rate which is subsequently rendered inaccurate within the meaning of section 1606(c) of this title, the creditor shall furnish another statement at the time of settlement or consummation.

(c) Timing of disclosures on unsolicited mailed or telephone purchase orders or loan requests

(1) If a creditor receives a purchase order by mail or

telephone without personal solicitation, and the cash price and the total sale price and the terms of financing, including the annual percentage rate, are set forth in the creditor's catalog or other printed material distributed to the public, then the disclosures required under subsection (a) of this section may be made at any time not later than the date the first payment is due.

(2) If a creditor receives a request for a loan by mail or telephone without personal solicitation and the terms of financing, including the annual percentage rate for representative amounts of credit, are set forth in the creditor's printed material distributed to the public, or in the contract of loan or other printed material delivered to the obligor, then the disclosures required under subsection (a) of this section may be made at any time not later than the date the first payment is due.

(d) Timing of disclosure in cases of an addition of a deferred payment price to an existing outstanding balance. If a consumer credit sale is one of a series of consumer credit sales transactions made pursuant to an agreement providing for the addition of the deferred payment price of that sale to an existing outstanding balance, and the person to whom the credit is extended has approved in writing both the annual percentage rate or rates and the method of computing the finance charge or charges, and the creditor retains no security interest in any property as to which he has received payments aggregating the amount of the sales price including any finance charges attributable thereto, then the disclosure required under subsection (a) of this section for the particular sale may be made at any time not later than the date the first payment for that sale is due. For the purposes of this subsection, in the case of

items purchased on different dates, the first purchased shall be deemed first paid for, and in the case of items purchased on the same date, the lowest price shall be deemed first paid for.

FEDERAL RESERVE SYSTEM

12 CFR 226

Regulation Z; Docket No. R-1167

Truth in Lending

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed Rule.

SUMMARY: The Board is proposing to amend Regulation Z, which implements the Truth in Lending Act, and the staff commentary to the regulation. Regulation Z would be revised to define more specifically the standard for providing "clear and conspicuous" disclosures, and to provide a more uniform standard among the Board's regulations. The staff commentary would be revised to include examples of how to meet this standard. Similar proposed revisions to Regulations B, E, M, and DD appear elsewhere in today's Federal Register. These revisions are intended to help ensure that consumers receive noticeable and understandable information that is required by law in connection with obtaining consumer financial products and services. In addition, consistency among the regulations should facilitate compliance by institutions. The Board also is proposing to add an interpretative rule of construction to state that the word "amount" represents a numerical amount throughout Regulation Z. The proposed updates to the staff commentary also provide guidance on consumers' exercise of the right to rescind certain home-secured loans. In addition, the

proposal includes several technical revisions to the staff commentary.

DATES: Comments must be received on or before January 30, 2004.

ADDRESSES: Comments should refer to Docket No. R-1167 and should be mailed to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551. However, because paper mail in the Washington area and at the Board of Governors is subject to delay, please consider submitting your comments by e-mail to regs.comments@federalreserve.gov, or faxing them to the Office of the Secretary at (202) 452-3819 or 452-3102. Members of the public may inspect comments in Room MP-500 of the Martin Building between 9:00 a.m. and 5:00 p.m. on weekdays pursuant to § 261.12, except as provided in § 261.14, of the Board's Rules Regarding Availability of Information, 12 CFR 261.12 and 261.14.

FOR FURTHER INFORMATION CONTACT: Krista P. DeLargy and Elizabeth A. Eurgubian, Attorneys, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452-3667 or 452-2412; for users of Telecommunications Device for the Deaf ("TDD") only, contact (202) 263-4869.

SUPPLEMENTARY INFORMATION:

I. Background

The purpose of the Truth in Lending Act (TILA), 15 U.S.C. 1601 et sec ., is to promote the informed use of consumer credit by providing for disclosures about its terms and cost. The act requires creditors to disclose the cost of credit as a dollar amount (the finance charge) and as an annual percentage rate (APR). Uniformity in creditors' disclosures is intended to assist consumers in comparison shopping for credit. TILA requires additional disclosures for loans secured by consumers' homes and permits consumers to rescind certain transactions that involve their principal dwelling. In addition, the act regulates certain practices of creditors. TILA is implemented by the Board's Regulation Z (12 CFR part 226). An official staff commentary interprets the requirements of Regulation Z (12 CFR part 226 (Supp. I)).

II. Proposed Revisions

Subpart A-General

Section 226.2-Definitions and Rules of Construction

2(a)(27) Clear and Conspicuous

Section 122(a) of TILA requires disclosures to be made clearly and conspicuously. See 15 U.S.C. 1632. This standard is implemented in Regulation Z. See § 226.5(a)(1); § 226.17(a)(1); § 226.31(b). Guidance on how creditors may comply with the clear and conspicuous

standard is contained in the staff commentary. See comment 5(a)(1)-1; 17(a)(1)-1. The commentary states that under this standard, disclosures must be in a reasonably understandable form. For purposes of the disclosures provided with credit card solicitations and applications, the commentary also notes that disclosures must be readily noticeable to the consumer. See comment Sa(a)(2)-1.

Consumer financial services and fair lending laws and the Board regulations that implement them contain similar but not identical standards for providing disclosures that consumers will notice and understand. Generally, disclosures must be "clear and conspicuous" under Regulations B (Equal Credit Opportunity), M (Consumer Leasing), Regulation P (Privacy of Consumer Financial Information), Z (Truth in Lending) and DD (Truth in Savings), and "clear and readily understandable" under Regulation E (Electronic Fund Transfers). In interpreting the "clear and conspicuous" standard, the staff commentaries to Regulations B, M and Z provide that disclosures must be "in a reasonably understandable" form; similarly, under Regulation DD disclosures must be in a format that allows consumers "to readily understand the terms of their account." In contrast, the Board's Regulation P (Privacy of Consumer Financial Information) defines the "clear and conspicuous" standard to mean that a disclosure is "reasonably understandable and designed to call attention to the nature and significance of the information" in the disclosure. 12 CFR § 216.3(b)(1). Regulation P also provides a series of examples of how to satisfy the standard. 12 CFR § 216.3(b)(2).

The Board believes that the recently implemented standard in Regulation P (65 FR 35162, June 1, 2000), articulates with greater precision than the other regulations the concepts underlying the duty to provide disclosures that consumers will notice and understand. Therefore, to provide consistent guidance on the clear and conspicuous standard among its regulations, the Board is proposing to amend Regulation Z by adding a definition for clear and conspicuous in § 226.2(a)(27), consistent with the "clear and conspicuous" definition in Regulation P. The staff commentary to Regulation Z also would be revised to add comments 2(a)(27)-1 and -2, consistent with Regulation P's examples of how to meet the clear and conspicuous standard. Similar proposed revisions to Regulations B, E, M, and DD appear elsewhere in today's Federal Register. These revisions are intended to help ensure that consumers receive noticeable and understandable information that is required by law in connection with obtaining consumer financial products and services. In addition, consistency among the regulations should facilitate compliance by institutions.

Proposed comments 2(a)(27)-3 and -4 contain guidance currently in comment 5(a)(1)-1. The "clear and conspicuous" standard does not prohibit adding other items to the federally required disclosures (such as contractual provisions or staterequired disclosures); nor does it prohibit sending promotional material with the disclosures. Proposed comment 2(a)(27)-3 would clarify, however, that the presence of other information may be a factor in determining whether the "clear and conspicuous" standard is met. Generally, segregating federally mandated disclosures from other information is more likely to satisfy the clear and conspicuous

standard.

The Board also proposes to adopt for Regulations B, E, M, Z and DD, guidance concerning type-sizes that are deemed to meet the "clear and conspicuous" standard and those that would likely be too small (this guidance currently applies only to credit card solicitations and applications under Regulation Z). See proposed comment 2(a)(27)-2(ii).

The proposal does not add special format requirements to the regulation where none currently exist. Accordingly, even though the revisions clarify that type size can be one factor to consider in determining whether a disclosure is conspicuous, the proposal would not add a specific type size requirement. Similarly, the proposal also would not affect other format rules, such as the existing requirement for making some disclosures more conspicuous than others (See § 226.5(a)(2); § 226.17(a)(2)), or segregating some specific information (See § 226.17(a)(1)).

To eliminate redundancy with proposed § 226.2(a)(27) and its accompanying commentary, the Board also proposes to revise the following commentary provisions in Regulation Z that address the "clear and conspicuous" standard: comments 5(a)(1)-1, Sa(a)(2)-1, 16-1, 24-1, and Appendix K (d)(2)-1. In this regard, in comment Sa(a)(2)-1, the guidance regarding disclosures for credit card applications and solicitations that are transmitted by electronic communication, has been deleted. Guidance regarding the "clear and conspicuous" standard for disclosures transmitted by electronic communication will be considered in the context of rulemakings dealing specifically with

electronic delivery of disclosures.

2(b) Rules of Construction

The Board proposes to add an interpretative rule of construction in § 226.2(b)(5) stating that where the word "amount" is used to describe a disclosure requirement it refers to a numerical amount throughout Regulation Z. This interpretation addresses a matter discussed in a recent court decision regarding the disclosure of payments scheduled to repay a closed-end credit transaction. See 15 U.S.C. 1638(a)(6); 12 CFR § 226.18(g). The Board believes that the decision, by endorsing narrative descriptions of amounts rather than numerical amounts, may lead to confusion in disclosures.

The term "amount" has general applicability throughout Regulation Z and the term "amount" is used throughout TILA, for example, to describe disclosures such as the amount financed, the amounts being disbursed to the consumer and to third parties, and the total of payments, which is defined as the amount the consumer will have paid after making all scheduled payments. A broad interpretation of the term suggesting that narrative descriptions may replace numerical "amounts" contravenes TILA's purpose to provide consumers with clear and uniform credit disclosures. Proposed comment 2(b)-2 would provide examples of how the interpretative rule of construction for "amount" applies in certain disclosures required by Regulation Z.

Subpart B-Open-end Credit

Section 226.15-Right of Rescission

15(a) Consumer's Right to Rescind

15(a)(2)

Section 125(a) of TILA provides that, in certain credit transactions in which the consumer's principal dwelling secures an extension of credit, the consumer may rescind the transaction for three business days after becoming obligated on the debt (and for open-end plans, after opening or increasing the credit limit on the plan). See 15 U.S.C. 1635(a); 12 CFR § 226.15(a)(1). The rescission period may extend up to three years in certain cases. The right of rescission was created to allow consumers time to reexamine their credit contracts and cost disclosures and to reconsider whether they want to place their home at risk by offering it as security for the credit. A consumer exercises the right to rescind by notifying the creditor of the rescission by mail, telegram, or other means of written communication. Creditors must provide consumers with a form to use in exercising the right to rescind, which must include the name and address of the creditor or agent of the creditor to receive the notice. See § 226.15(b). Notice is considered given when mailed, or when filed for telegraphic transmission, or, if sent by other means, when delivered to the creditor's designated place of business. See § 226.15(a)(2).

Comment 15(a)(2)-1 states that a creditor may designate an agent to receive the notification so long as the agent's name and address appear on the notice provided to the consumer under § 226.15(b). The comment would be revised to address situations where a creditor fails to provide the required form or designate an address for sending the notice. The

proposed comment would provide that in such cases, if a consumer sends the notice to someone other than the creditor or assignee, such as a third-party loan servicer acting as the creditor's agent, the consumer's notice of rescission may be effective if under the applicable state law, delivery to that person would be deemed to constitute delivery to the creditor or assignee.

15(d) Effects of Rescission

When a consumer exercises the right to rescind a mortgage transaction, the consumer is not liable for any finance charges or other charges and any security interest in the consumer's home becomes void. See 15 U.S.C. 1635(b); § 226.15(d)(1). After the transaction is rescinded, the creditor must tender any money or property given to anyone in connection with the transaction within a specified time frame, which triggers the consumer's duty to return any money or property that the creditor delivered to the consumer, although a court may modify these procedures. See § 226.15(d)(2)-(4).

Comment 15(d)(4)-1 would be revised to state expressly that a consumer's substantive right to rescind under § 226.15(a)(1) and § 226.15(d)(1) is not affected by the procedures referred to in § 226.15(d)(2) and (3), or the modification of those procedures by a court. Accordingly, where consumers seek rescission and the matter is contested by the creditor, a determination regarding consumers' right to rescind would normally be made before a court determines the amounts owed and establishes the procedures for the parties to tender any money or property. The sequence of procedures should not affect consumers' ability under

TILA to establish their substantive right to rescind and to have the lien amount reduced, which may be necessary before consumers are able to establish how they will refinance or otherwise repay the loan.

Subpart C-Closed-End Credit

Section 226.18-Content of Disclosures

18(c) Itemization of Amount Financed

A technical revision would be made to comment 18(c)(1)(iii)-1, to conform a citation to footnote 41 of Regulation Z. No substantive change is intended.

Section 226.19 - Certain Residential Mortgage and Variable-Rate Transactions

19(b) Certain Variable-Rate Transactions

Section 226.19(b) applies to all closed-end variable-rate transactions that are secured by the consumer's principal dwelling and have a term greater than one year. Guidance about the applicability of § 226.19 to construction loans was published in comment 19(b)-1. 54 FR 9422, March 7, 1989. That guidance has been inadvertently appended to comment 19(b)(1)-1 in the Code of Federal Regulations. The two comments are restated in their correct form for reprinting in the Code of Federal Regulations. No substantive change is intended.

Section 226.23-Right of Rescission

23(a) Consumer's Right to Rescind

For the reasons discussed above, comment 23(a)(2)-1 would be revised to state the rule for effective delivery of a rescission notice when the creditor fails to provide the required form or designate an address for sending the notice (See supplementary information to proposed comment 15(a)(2)-1.)

Section 226.23-Right of Rescission

23(d) Effects of Rescission

For the reasons discussed above, comment 23(d)(4)-1 would be revised to expressly state that a consumer's substantive right to rescind under § 226.23(a)(1) and § 226.23(d)(1) is not affected by the procedures referred to in § 226.23(d)(2) and (3), or the modification of those procedures by a court. (See supplementary information to proposed comment 15(d)(4)-1.)

Subpart D-Miscellaneous

Section 226.27-Language of Disclosures

In March 2001, the Board revised § 226.27 to permit creditors to provide disclosures in languages other than English as long as disclosures in English are available to consumers who request them. 66 FR 1739, March 30, 2001. Technical revisions would be made to comment 27-1, and comment 27-2 would be deleted to conform the commentary to § 226.27, as amended. No substantive change is intended.

Subpart E-Special Rules for Certain Home Mortgage Transactions

Section 226.32-Requirements for Certain Closed-End Home Mortgages

32(a) Coverage

Rules for certain closed-end mortgage loans in § 226.32 are triggered, in part, by the amount of "points and fees" payable by the consumer at or before loan closing and the "total loan amount." See § 226.32(a)(1)(ii). Comment 32(a)(1)(ii)-1, which was added in 1996, provides examples for calculating the "total loan amount." 61 FR 14952, April 4, 1996. A technical revision would be made to comment 32(a)(1)(ii)-1, to correct a dollar amount given in one of the examples. No substantive change is intended.

Request for Information Regarding Debt Cancellation and Debt Suspension Agreements

Some lenders have replaced credit insurance products with products known as debt cancellation agreements and debt suspension agreements. Under a debt cancellation agreement or debt suspension agreement, a creditor agrees to cancel, or temporarily suspend, all or part of the borrower's repayment obligation upon the occurrence of a specified event, such as death, disability, or unemployment. The fee for a debt cancellation or debt suspension agreement can be collected monthly or in a lump sum.

At least one state has said it will regulate debt cancellation and suspension products as insurance, other states have said they will regulate the products as bank products and not as insurance, and still others have not yet announced positions. The Office of the

Comptroller of the Currency (OCC) has recently issued regulations governing sales of debt cancellation and suspension agreements by national banks. See 12 CFR 37.1 et seq.

Under the TILA and Regulation Z, debt cancellation agreements are generally subject to the same disclosure rules as credit insurance. In 1996, the Board revised Regulation Z to establish essentially identical disclosure rules for credit insurance and debt cancellation agreements. Accordingly, although debt cancellation fees satisfy the definition of a "finance charge," they may be excluded from the finance charge on the same conditions as credit insurance premiums (without regard to whether debt cancellation agreements are deemed to be insurance contracts under state law). The types of debt cancellation agreements eligible for the exclusion are limited to those that provide for cancellation of or all or part of a debtor's liability (1) in case of accident or loss of life, health, or income or (2) for amounts exceeding the value of collateral securing the debt (commonly referred to as "gap" coverage, frequently sold in connection with motor vehicle loans). See §§ 226.4(b)(7) and (10), 4(d)(1) and (3).

Industry representatives have asked the Board to address disclosure issues under TILA and Regulation Z that may be raised by the sale of debt cancellation and debt suspension products. Anecdotal evidence suggests that the sale of those products in lieu of credit insurance has increased and that creditors are offering expanded coverage, for example to suspend repayment obligations for life-cycle events such as marriage and divorce. Some industry representatives

have stated that additional guidance may be useful in clarifying the circumstances in which products offering expanded coverage qualify for the exclusions in § 226.4(d)(3) for debt cancellation fees, and in clarifying what disclosures should be provided to consumers in certain circumstances.

To consider the requests for guidance more fully, information and comment are solicited as follows:

- What are the similarities and differences among credit insurance, debt cancellation coverage, and debt suspension coverage, in the case of both closed-end and open-end credit?

- With what types of closed-end and open-end credit are debt cancellation and debt suspension products sold? Do creditors typically package multiple types of coverage (e.g., disability and divorce), or sell them separately? Do creditors typically sell the products at, or after, consummation (for closed-end credit) or account opening (for open-end credit plans)?

- What disclosures are made with the sale of a product or upon conversion from one product to another, whether required by TILA or other laws? How are monthly or other periodic fees disclosed to consumers?

- Under Regulation Z, fees for credit protection programs written in connection with a credit transaction are finance charges but some fees may be excluded from the disclosed finance charge if required disclosures are made and the consumer affirmatively elects the optional coverage in writing. See §§

226.4(b)(7) and (10), 4(d)(1) and (3). Is there a need for guidance concerning the applicability of those provisions to certain types of coverage now available? Are the required disclosures adequate for all types of products subject to § 4(d)(1) or 4(d)(3)?

- Under TILA, a credit card issuer must notify a consumer before changing the consumer's credit insurance provider. See 15 U.S.C. 1637(g); 12 CFR § 226.90. Card issuers that intend to change credit insurance providers need only notify consumers that they may opt out of the new coverage. Should the Board interpret or amend § 226.90 to address conversions from credit insurance to debt cancellation or debt suspension agreements? If so, is there a need to address conversions other than for credit card accounts?

- OCC regulations for national bank sales of debt cancellation and suspension agreements require a customer's affirmative election of the product. If the Board interprets or amends § 226.90 to address conversions from credit insurance to debt cancellation or debt suspension agreements, what additional guidance would card issuers need, if any, to comply with both rules?

III. Form of Comment Letters

Comment letters should refer to Docket No. R-1167 and, when possible, should use a standard typeface with a font size of 10 or 12; this will enable the Board to convert text submitted in paper form to machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review.

Comments may be mailed electronically to regs.comments@federalreserve. gov.

IV. Solicitation of Comments Regarding the Use of "Plain Language"

Section 722 of the Gramm-Leach-Bliley Act of 1999 requires the Board to use "plain language" in all proposed and final rules published after January 1, 2000. The Board invites comments on whether the proposed rules are clearly stated and effectively organized, and how the Board might make the proposed text easier to understand.

V. Initial Regulatory Flexibility Analysis

In accordance with section 3(a) of the Regulatory Flexibility Act, the Board has reviewed the proposed amendments to Regulation Z. The proposed amendments are not expected to have any significant impact on small entities. A final regulatory flexibility analysis will be conducted after consideration of comments received during the public comment period.

VI. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board reviewed the rule under the authority delegated to the Board by the Office of Management and Budget. The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, this information collection unless it displays a currently valid OMB control number. The OMB control number is 7100-0199.

The collection of information that is revised by this rulemaking is found in 12 CFR part 226. This collection is mandatory (15 U.S.C. 1601 et seq.) to evidence compliance with the requirements of Regulation Z and the Truth in Lending Act (TILA). The respondents and recordkeepers are for-profit financial institutions, including small businesses. Institutions are required to retain records for twenty-four months. This regulation applies to all types of creditors, not just state member banks; however, under Paperwork Reduction Act regulations, the Federal Reserve accounts for the burden of the paperwork associated with the regulation only for state member banks. Other agencies account for the paperwork burden on their respective constituencies under this regulation.

The proposed revisions would provide creditors with a more uniform definition of providing "clear and conspicuous" disclosures and examples of how to satisfy the "clear and conspicuous" standard. The proposed revisions also would provide that the term "amount" represents a numerical amount throughout Regulation Z. The proposed updates to the staff commentary also provide guidance on consumers' exercise of rescission for certain home-secured loans. While the proposal would amend Regulation Z and the staff commentary, it is expected that these revisions would not increase the paperwork burden of creditors. With respect to state member banks, there are 1,312 respondents and recordkeepers. Current annual burden is estimated to be 618,398 hours.

Because the records would be maintained at state member banks and the notices are not provided to

the Federal Reserve, no issue of confidentiality arises under the Freedom of Information Act.

Comments on the collection of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (7100-0199), Washington, DC 20503, with copies of such comments sent to Cynthia Ayouch, Federal Reserve Board Clearance Officer, Division of Research and Statistics, Mail Stop 41, Board of Governors of the Federal Reserve System, Washington, DC 20551.

Text of Proposed Revisions

Certain conventions have been used to highlight the proposed revisions. New language is shown inside bold-faced arrows while language that would be deleted is set off with bold-faced brackets.

List of Subjects in 12 CFR Part 226

Advertising, Consumer protection, Federal Reserve System, Reporting and recordkeeping requirements, Truth in Lending.

For the reasons set forth in the preamble, the Board proposes to amend Regulation Z, 12 CFR part 226, as set forth below:

PART 226 - TRUTH IN LENDING (REGULATION Z)

1. The authority citation for part 226 would continue to read as follows:

Authority: 12 U.S.C. 3806; 15 U.S.C. 1604 and 1637(c)(5).

2. Section 226.2 is amended by adding a new paragraph (a)(27) and adding a new paragraph (b)(5) to read as follows:

Subpart A - General

* * * * *

§ 226.2 Definitions and rules of construction.

(a) Definitions. For purposes of this regulation, the following definitions apply:

* * * * *

(27) Clear and conspicuous means that a disclosure is reasonably understandable and designed to call attention to the nature and significance of the information in the disclosure.

* * * * *

(b) Rules of construction. For purposes of this regulation, the following rules of construction apply:

* * * * *

(5) Where the word "amount" is used in this regulation to describe disclosure requirements, it refers to a numerical amount.

* * * * *

3. In Supplement I to Part 226:

a. Under Section 226.2 Definitions and Rules of Construction, under La) Definitions, a new paragraph title (27) Clear and conspicuous is added, and new paragraphs (27) 1. through (27) 4. are added; and under (b) Rules of Construction, a new paragraph (b)2. is added.

b. Under Section 226.5 General Disclosure Requirements, under Paragraph 5(a)(1), paragraph 1. is revised.

c. Under Section 226.Sa Credit and Charge Card Applications and Solicitations, under Paragraph Sa(a)(2), paragraph 1. is revised.

d. Under Section 226.15 Right of Rescission, under Paragraph 15(a)(2), paragraph 1. is revised, and under Paragraph 15(4)(4),, paragraph 1. is revised.
e. Under Section 226.16 Advertising, paragraph 1. is revised.

f. Under Section 226.18 Content of Disclosures, under Paragraph 18(c)(1)(iii), paragraph 1. is revised.

g. Under Section 226.19 Certain Residential Mortgage and Variable-Rate Transactions, under 19(b) Certain variable-rate transactions, paragraph 1. is revised, and under Paragraph 19(b)(1), paragraph 1. is revised.

h. Under Section 226.23 Right of Rescission, under Paragraph 23(a)(2), paragraph 1. is revised, and under Paragraph 23(4)(4),, paragraph 1. is revised.

i. Under Section 226.24 Advertising, paragraph

1. is revised.

j. Under Section 226.27, the section title is revised, paragraph 1. is revised, and paragraph 2. is removed and reserved.

k. Under Section 226.32 Requirements for Certain Closed-End Home Mortgages, under Paragraph 32(a)(1)(ii), paragraph L ii. is revised.

1. Under Appendix K-Total Annual Loan Cost Rate Computations for Reverse Mortgage Transaction, under (d) Reverse mortgage model form and sample form, under (d)(2), paragraph 1. would be revised.

SUPPLEMENT I TO PART 22C)-OFFICIAL STAFF INTERPRETATIONS

* * * * *

SUBPART A – GENERAL

Section 226.2-Definitions and Rules of Construction

2(a) Definitions.

* * * * *

2(a)(27) Clear and conspicuous.

1. Reasonably understandable. Examples of disclosures that are reasonably understandable include disclosures that:

i. Present the information in the disclosure in clear, concise sentences, paragraphs, and sections;

ii. Use short explanatory sentences or bullet lists whenever possible;

iii. Use definite, concrete, everyday words and active voice whenever possible;

iv. Avoid multiple negatives;

v. Avoid legal and highly technical business terminology whenever possible; and vi. Avoid explanations that are imprecise and readily subject to different interpretations.

2. Designed to call attention. Examples of disclosures that are designed to call attention to the nature and significance of the information include disclosures that:

i. Use a plain-language heading to call attention to the disclosure;

ii. Use a typeface and type size that are easy to read. Disclosures in 12-point type generally meet this standard. Disclosures printed in less than 12-point type do not automatically violate the standard; however, disclosures in less than 8-point type would likely be too small to satisfy the standard;

iii. Provide wide margins and ample line spacing;

iv. Use boldface or italics for key words; and

v. In a document that combines disclosures with other information, use distinctive type size, style, and graphic devices, such as shading or sidebars, to call attention to the disclosures.

3. Other information. Except as otherwise provided, the "clear and conspicuous" standard does not prohibit adding to the required disclosures such items as contractual provisions, explanations of contract terms, state disclosures, and translations; or sending promotional material with the required disclosures. However, the presence of this other information may be a factor in determining whether the "clear and conspicuous" standard is met.

4. Use of codes or symbols. The "clear and conspicuous" standard does not prohibit using codes or symbols such as APR (for annual percentage rate), FC (for finance charge), or Cr (for credit balance), so long as a legend or description of the code or symbol is provided on the disclosure statement.

* * * * *

2(b) Rules of Construction

* * * * *

2. Amount. A creditor would state a dollar amount when disclosing the amount financed, finance charge, or the amount of any payment for a closed-end transaction (Subpart C). A creditor might explain how the amount of any finance charge will be determined by stating a percentage (for example, where the fee is a percentage of each cash advance) or a dollar amount (for example, a minimum finance charge of $1.00) in disclosures provided before the first transaction under an open-end plan (Subpart B).

* * * * *

SUBPART B - OPEN-END CREDIT

* * * * *

Section 226.5 - General Disclosure Requirements

5(a) Form of disclosures.

Paragraph 5(a)(1).

1. Clear and conspicuous. See § 226.2(a)(27) and accompanying comments. [The "clear and conspicuous" standard requires that disclosures be in a reasonably understandable form. Except where otherwise provided, the standard does not require that disclosures be segregated from other material or located in any particular place on the disclosure statement, or that numerical amounts or percentages be in any particular type size. (But see comments Sa(a)(2)-1 and -2 for special rules concerning section 226.Sa disclosures for credit card applications and solicitations.) The standard does not prohibit:

- Pluralizing required terminology (finance charge and annual percentage rate).

- Adding to the required disclosures such items as contractual provisions, explanations of contract terms, state disclosures, and translations.

- Sending promotional material with the required disclosures.

- Using commonly accepted or readily understandable abbreviations (such as mo. for

month or Tx. for Texas) in making any required disclosures.

- Using codes or symbols such as APR (for annual percentage rate), FC (for finance charge), or Cr (for credit balance), so long as a legend or description of the code or symbol is provided on the disclosure statement.]

* * * * *

Section 226.5a-Credit and Charge ,Card Applications and Solicitations

* * * * *

5a(a) General Rules

Sa(a)(2) Form of Disclosures

1. Clear and conspicuous standard. See § 226.2(a)(27) and accompanying comments. [For purposes of § 226.Sa disclosures, "clear and conspicuous" means in a reasonably understandable form and readily noticeable to the consumer. As to type size, disclosures in 12-point type are deemed to be readily noticeable for purposes of section 226.Sa. Disclosures printed in less than 12-point type do not automatically violate the standard; however, disclosures in less than 8-point type would likely be too small to satisfy the standard. Disclosures that are transmitted by electronic communication are judged for purposes of the clear-and-conspicuous standard based on the form in which they are provided even though they may be viewed by the consumer in a different

form.]

* * * * *

Section 226.15 - Right of Rescission

15 (a) Consumer's right to rescind.

* * * * *

Paragraph 15(a).

1. Consumer's exercise of right. The consumer must exercise the right of rescission in writing but not necessarily on the notice supplied under § 226.15(b). Whatever the means of sending the notification of rescission-mail, telegram or other written means-the time period for the creditor's performance under § 226.15(d)(2) does not begin to run until the notification has been received. The creditor may designate an agent to receive the notification so long as the agent's name and address appear on the notice provided to the consumer under § 226.15(b). Where the creditor fails to provide the consumer with a designated address for sending the notification of rescission and the consumer sends the notification to someone other than the creditor or assignee, such as a third-party loan servicer acting as the creditor's agent, state law determines whether delivery to that person constitutes delivery to the creditor or assignee.

* * * * *

15(d) Effects of rescission.

* * * * *

Paragraph 15(d)(4).

1. Modifications. The procedures outlined in § 226.15(d)(2) and (3) may be modified by a court. For example, when a consumer is in bankruptcy proceedings and prohibited from returning anything to the creditor, or when the equities dictate, a modification might be made. The consumer's substantive right to rescind under § 226.15(a)(1) and § 226.15(d)(1) is not affected by the procedures referred to in § 226.15(d)(2) and (3), or the modification of those procedures by a court.

* * * * *

Section 226.16-Advert ising

1. Clear and conspicuous standard. See § 226.2(a)(27) and accompanying comments. [Section 226.16 is subject to the general "clear and conspicuous" standard for subpart B (see § 226.5(a)(1)) but prescribes no specific rules for the format of the necessary disclosures. The credit terms need not be printed in a certain type size nor need they appear in any particular place in the advertisement.]

* * * * *

SUBPART C - CLOSED-END CREDIT

* * * * *

Section 226.18-Content of Disclosures

* * * * *

18(c) Itemization of amount financed.

* * * * *

Paragraph 18(c)(1)(iii)

1. Amounts paid to others. This includes, for example, tag and title fees; amounts paid to insurance companies for insurance premiums; security interest fees, and amounts paid to credit bureaus, appraisers or public officials. When several types of insurance premiums are financed, they may, at the creditor's option, be combined and listed in one sum, labeled "insurance" or similar term. This includes, but is not limited to, different types of insurance premiums paid to one company and different types of insurance premiums paid to different companies. Except for insurance companies and other categories noted in footnote [40] 41, third parties must be identified by name.

* * * * *

Section 226.19 Certain Residential Mortgage and Variable-Rate Transactions

* * * * *

19(b) Certain variable-rate transactions.

1. Coverage. Section 226.19(b) applies to all closed-end variable-rate transactions that are secured by the consumer's principal dwelling and have a term greater than one year. The requirements of this section apply not only to transactions financing the initial

acquisition of the consumer's principal dwelling, but also to any other closedend variable-rate transaction secured by the principal dwelling. Closed-end variable-rate transactions that are not secured by the principal dwelling, or are secured by the principal dwelling but have a term of one year or less, are subject to the disclosure requirements of § 226.180(1) rather than those of § 226.19(b). (Furthermore, "shared-equity" or "shared-appreciation" mortgages are subject to the disclosure requirements of

§ 226.180(1) rather than those of § 226.19(b) regardless of the general coverage of those sections.) For purposes of this section, the term of a variable-rate demand loan is determined in accordance with the commentary to § 226.17(c)(5). In determining whether a construction loan that may be permanently financed by the same creditor is covered under this section, the creditor may treat the construction and the permanent phases as separate transactions with distinct terms to maturity or as a single combined transaction. For purposes of the disclosures required under § 226.18, the creditor may nevertheless treat the two phases either as separate transactions or as a single combined transaction in accordance with § 226.17(c)(6). Finally, in any assumption of a variablerate transaction secured by the consumer's principal dwelling with a term greater than one year, disclosures need not be provided under §§ 226.18(f)(2)(ii) or 226.19(b).

* * * * *

Paragraph 19(b)(1).

1. Substitute. Creditors who wish to use

publications other than the Consumer Handbook on Adjustable Rate Mortgages must make a good faith determination that their brochures are suitable substitutes to the Consumer Handbook. A substitute is suitable if it is, at a minimum, comparable to the Consumer Handbook in substance and comprehensiveness. Creditors are permitted to provide more detailed information than is contained in the Consumer Handbook. [In determining whether a construction loan that may be permanently financed by the same creditor is covered under this section, the creditor may treat the construction and the permanent phases as separate transactions with distinct terms to maturity or as a single combined transaction. For purposes of the disclosures required under § 226.18, the creditor may nevertheless treat the two phases either as separate transactions or as a single combined transaction in accordance with § 226.17(c)(6). Finally, in any assumption of a variable-rate transaction secured by the consumer's principal dwelling with a term greater than one year, disclosures need not be provided under §§ 226.18(f)(2)(ii) or 226.19(b).]

* * * * *

Section 226.23 - Right of Rescission

23(a) Consumer's right to rescind.

* * * * *

Paragraph 23(a).

1. Consumer's exercise of right. The consumer must exercise the right of rescission in writing but not

necessarily on the notice supplied under § 226.23(b). Whatever the means of sending the notification of rescission-mail, telegram or other written means-the time period for the creditor's performance under § 226.23(d)(2) does not begin to run until the notification has been received. The creditor may designate an agent to receive the notification so long as the agent's name and address appear on the notice provided to the consumer under § 226.23(b). Where the creditor fails to provide the consumer with a designated address for sending the notification of rescission and the consumer sends the notification to someone other than the creditor or assignee, such as a third-party loan servicer acting as the creditor's agent, state law determines whether delivery to that person constitutes delivery to the creditor or assignee.

* * * * *

23(d) Effects of rescission.

* * * * *

Paragraph 23(d)(4).

1. Modifications. The procedures outlined in § 226.23(d)(2) and (3) may be modified by a court. For example, when a consumer is in bankruptcy proceedings and prohibited from returning anything to the creditor, or when the equities dictate, a modification might be made. The consumer's substantive right to rescind under § 226.23(a)(1) and § 226.23(d)(1) is not affected by the procedures referred to in § 226.23(d)(2) and (3), or the modification of those procedures by a court.

* * * * *

Section 226.24-Advert ising

1. Clear and conspicuous standard See § 226.2(a)(27) and accompanying comments. On a merchandise tag that is an advertisement under the regulation, a creditor is not prohibited under the "clear and conspicuous" standard from including the necessary credit terms on both sides of the tag, so long as each side is accessible. [This section is subject to the general "clear and conspicuous" standard for this subpart but prescribes no specific rules for the format of the necessary disclosures. The credit terms need not be printed in a certain type size nor need they appear in any particular place in the advertisement. For example, a merchandise tag that is an advertisement under the regulation complies with this section if the necessary credit terms are on both sides of the tag, so long as each side is accessible.]

* * * * *

SUBPART D – MISCELLANEOUS

* * * * *

Section 226.27-[Spanish] Language of Disclosures

1. Subsequent disclosures. If a creditor [in Puerto Rico] provides initial disclosures in [Spanish] 00-a language other than English 4, subsequent disclosures need not be in [Spanish] that other language. For example, if the creditor gave Spanish-language initial disclosures, periodic statements and change-in-terms notices may be made in English.

2. [Removed and reserved.]

* * * * *

SUBPART E - SPECIAL RULES for CERTAIN HOME MORTGAGE TRANSACTIONS

* * * * *

Section 226.32 - Requirements for Certain Closed-end Home Mortgage

* * * * *

Paragraph 32(a)(1)(ii)

1. Total loan amount. For purposes of the "points and fees" test, the total loan amount is calculated by taking the amount financed, as determined according to section 226.18(b), and deducting any cost listed in section 226.32(b)(1)(iii) and section 226.32(b)(1)(iv) that is both included as points and fees under section 226.32(b)(1) and financed by the creditor. Some examples follow, each using a $10,000 amount borrowed, a $300 appraisal fee, and $400 in points. A $500 premium for optional credit life insurance is used in one example

* * * * *

ii. If the consumer pays the $300 fee for the creditor-conducted appraisal in cash at closing, the $300 is included in the points and fees calculation because it is paid to the creditor. However, because the $300 is not financed by the creditor, the fee is not part of the

amount financed under section 226.18(b) [($10,000, in this case)]. In this case, the amount financed is the same as the total loan amount [is] $9,600 ($10,000, less $400 in prepaid finance charges).

* * * * *

APPENDIX K-TOTAL-ANNUAL-LOAN-COST RATE COMPUTATIONS FOR REVERSE-MORTGAGE TRANSACTIONS

* * * * *

(d) Reverse-Mortgage Model Form and Sample Form

* * * * *

(d)(2) Sample Form

1. General. [The "clear and conspicuous" standard for reverse-mortgage disclosures does not require disclosures to be printed in any particular type size.] The "clear and conspicuous" standard applies to disclosures required by § 226.33. Disclosures may be made on more than one page, and use both the front and the reverse sides, as long as the pages constitute an integrated document and the table disclosing the total annual loan-cost rates is on a single page.

* * * * *

By order of the Board of Governors of the Federal Reserve System, November 25, 2003.

Jennifer J. Johnson,
Secretary of the Board

No. 469

"AMOUNT" OF PAYMENTS
Sec. 226.8(b)

April 19, 1971

This is in reply to your letter in which you inquire whether the requi9rement of Section 226.8(b)(3) that the "amount" of the payments be shown is satisfied by the following statement where interest is computed on a simple interest basis:

"$ _____ plus interest on December 10, 19__
$ _____ plus interest on December 10, 19__
The remaining unpaid balance plus interest
on December 10, 19__"

In the staff's view, the requirement that the creditor disclose the "amount" of the payment, requires him to compute and disclose the dollar amount of each payment. Accordingly, the above quoted language would not meet the disclosure requirements of Regulation Z.

Griffith L. Garwood,
Attorney

No. 470

DISCLOSURES AT TIME APPLICATION SOLICTED
See. 226.7(a)

April 12, 1971

This is in response to your letter regarding an alleged violation of the Truth-in-Lending Act. You indicate that an agent of your office, upon being offered an application for a credit card issued by _____, was not able to obtain the Truth-in-Lending disclosures relating to the operation of the account.

Section 226.7(a) of Regulation Z prescribes that the initial disclosure for open end credit must be given to the customer "before the first transaction is made..." Consequently, the bank's failure to provide the Section 226.7(a) disclosures at the time of offering the application for a credit card would not constitute a violation of Regulation Z. We assume that the bank issues the required disclosures before the first transaction is made on the account. In the event this is not the case, we would appreciate your letting us know so that we may follow-up on the matter.

Griffith L. Garwood,
Attorney

No. 02-3958

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

HARRY CARMICHAEL and LOUISE CARMICHAEL,
Plaintiff-Appellants

v.

THE PAYMENT CENTER, INC. OF AMERICA,
Defendant-Appellee.

Appeal from the United States District Court,
Northern District of Illinois

BRIEF AMICI CURIAE OF AAREP and NATIONAL CONSUMER LAW CENTER IN SUPPORT OF APPELLANTS

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CORPORATE DISCLOSURES

The National Consumer Law Center is a nonprofit corporation organized under the laws of the Commonwealth of Massachusetts and formed for charitable purposes pursuant to Section 501(c)(3)(1993) of the Internal Revenue Code. NCLC has no parent company and is not a subsidiary or affiliate of any publicly owned corporation. Therefore, no publicly-held company owns NCLC stock.

No attorneys or law firms have represented NCLC in this action other than the attorneys whose names appear on the brief.

CORPORATE DISCLOSURES

AARP is a nonprofit corporation organized under the laws of the District of Columbia, and operated exclusively for the promotion of social welfare pursuant to Section 501(c)(4)(1993) of the Internal Revenue Code. Other legal entities related to AARP include AARP Foundation, AARP Services, Inc., and Legal Counsel for the Elderly, Inc. AARP has no parent company and is not a subsidiary or affiliate of any publicly owned corporation. Therefore no publicly-held company owns AARP stock.

No attorneys or law firms have represented AARP in this action other than the attorneys whose names appear on the brief.

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STATEMENT OF INTEREST

The interest of AARP and the National Consumer Law Center (NCLC) are stated in their Motion for Leave to File a Brief Amici Curiae. Amici will not burden the Court with their repetition.

Both AARP and the National Consumer Law Center have long established interest and expertise in the Truth in Lending Act (TILA). NCLC originally authored and published a treatise on TILA in 1986 which is currently in its Fourth Edition. AARP has actively advocated for the disclosure protections of TILA for two decades and AARP Foundation Litigation has been litigating TILA issues for older homeowners for more than thirteen years. Amici file this brief in an effort to put before the Court information and analysis of the Truth in Lending Act's application to the loan in question that was not fully developed by either of the parties at the district court or before this Court. If the Panel decision is permitted to stand, the power of TILA both to accurately disclose to consumers the essential terms of their loan transactions and to offer redress for failures to so disclose will be unjustifiably eroded.

ARGUMENT OF LAW

The Panel framed the issue in this case as determining, "whether ... only a dollar figure can satisfy § 1638(a)(6)'s amount requirement." Carmichael v. Payment Ctr., Inc., 2003 U.S. App. LEXIS 14361 at *5 (N.D. Ill. 2003). The Panel concluded that the final payment in a balloon loan can be described, rather than stated in a dollar amount. Id. at *7-*8. This conclusion disregards the

Truth In Lending Act'sfn1 stated purposes and the repeated use of the word "amount" by Congress and the Federal Reserve Board (Board) as a synonym for a number. It also directly contradicts an early interpretation by the Board finding that disclosure of the payment schedule requires a dollar figure.fn2 The Panel relied upon one provision of Regulation Z related to a special type of re-payment plan, not applicable to this loan, in support of its conclusion. Id. *6-*7. The resulting broad ruling undermines Congress's attempt to create a system where credit is disclosed in a uniform and precise way so that consumers can easily understand the cost of credit and their legal obligations to repay it.

I. TILA AND REGULATION Z REQUIRE DISCLOSURE OF DOLLAR AMOUNTS

A. Descriptive Disclosure Of Material Terms of a Loan Transaction Does Not Satisfy Either the Purpose or Requirements of the Truth In Lending Act

Prior to the enactment of TILA in 1968, the price tag for a credit transaction could not be deciphered. While creditors advertised interest rates, consumers had no way of determining how the rate was calculated and could not compare apples-to-apples on either interest rates or other costs of the credit. An advertised, 6% add-on interest rate might, in fact, be substantially higher than a 10% rate that was actuarially computed. See, Renuart and Keest, Truth in Lending, § 1.1.1 (4th ed. 1999). TILA was enacted "to assure accurate and uniformly computed disclosures of the critical elements of credit cost." Ralph J. Rohner and Fred H. Miller, Truth in Lending, 1.01[1] (2000); see also, Adams v. Plaza Fin. Co., 168 F.3d 932, 936 (7th Cir. 1999) ("[A]ll. .

[the Act] requires is truthful and (it is hoped) informative disclosure of the interest rate and other terms of credit.").

Congress determined that five terms were critical to determining the cost of credit:

- Finance Charge
- Annual Percentage Rate (APR)
- Amount Financed
- Total of Payments
- Payment Schedulefn3

Each of these material terms contributes a different piece to the consumer's understanding of the cost of the credit. To ensure uniformity in the disclosure of these terms, Regulation Zfn4 defines each and instructs creditors on how to calculate and disclose them. The Board assures the Act's goals are met by publishing model disclosure forms that illustrate how lenders can provide the required information in a uniform and "clear and conspicuous" manner. See 15 U.S.C. § 1604(b) (model forms aid "the borrower ...in understanding the transaction by utilizing readily understandable language to simplify the technical nature of the disclosures."); 15 U.S.C.§ 1632(a) (clear and conspicuous requirement). The Act, Regulation Z, the Commentary, and the model forms translate the cost of credit into cold, hard numbers. Through these dollar disclosures, TILA fosters the informed use of credit by making the cost of credit more transparent, thereby allowing consumers to comparison shop. See 15 U.S.C. § 1601(a).

Of the five material disclosures, the payment schedule

and its affect upon the total of payments is the main subject of the Petition for Hearing En Banc. The payment schedule is a material disclosure mandated by TILA. 15 U.S.C.§ 1602(u). It is defined as "[t]he number, amounts, and timing of payments scheduled to repay the obligation" and is required to be disclosed in the "federal box" on the TILA disclosure. Regulation Z, §§ 226.18(g); 226.17(a)(1). Where a consumer has entered into a balloon mortgage transaction, the amount of the balloon payment is the final payment disclosed in the payment schedule. The Panel's substitution of a description of the balloon payment ("remaining principal balance" or "balance of all unpaid principal and interest to be paid in full") for the numerical amount ($68,749.61 or $69,437.10, depending on which description reflects the legal obligation of the consumer)fn5 takes consumers back to pre-TILA days when the cost of credit was muddled by verbiage and shrouded in mystery. Absent standardized dollar disclosures, consumers simply cannot compare apples to apples, amounts to amounts.

B. Federal Reserve Board's Staff Letter Interpreting of the Meaning of "Amount" Is Entitled to Deference

The opinion of the Panel was not informed by one very significant document.

In 1971 the Federal Reserve Board issued an opinion on the meaning of the word "amount" in the payment schedule. "In the staff's view, the requirement that the creditor disclose the `amount' of the payment requires him to compute and disclose the dollar amount of each payment." See FRB Letter No. 469, April 19, 1971, by

Griffin L. Garwood. Exhibit 1. The Board specifically rejected as inadequate a proposed disclosure of the schedule of payments that described it as:

$_____$plus interest on December 10, 19__
$_____$plus interest on December 10, 19__

The remaining unpaid balance plus interest on December 10, 19__.

This interpretation of TILA by the Board is entitled to great deference and is dispositive unless "demonstrably irrational." Ford Motor Credit Co. v. Milhollin, 444 U.S. 555, 556 (1980). While such letters have been officially replaced by the Commentary to Regulation Z,fn6 this letter, directly addressing the main issue in this case, is powerful evidence that the Board, from as long ago as 1971, required the disclosure of the dollar amount of any payment on the payment schedule.

C. A Ruling That the Term "Amount" Does Not Require a Numerical Disclosure Conflicts With Its Meaning and Usage Throughout Regulation Z and Its Commentary

The term "amount" is widely used throughout Regulation Z -- appearing over 600 times in the Regulation, its appendices, and Commentary.' Any interpretation of "amount" cannot be made in a vacuum, but must consider the meaning that is ascribed to it throughout the Regulation. See U.S. v. Morton, 467 U.S. 822 at 828 (1984) (statutory terms are not to be construed in isolation; we must read statutes as a whole); see also, Ziegler Coal Co. v. Office of Workers' Comp. Programs, D.O.L., 326 F.3d 894 at 900 (7th Cir.

2003); Ortloff v. U.S.A., 203 U.S. App. LEXIS 13935 at *15 (7th Cir. 2003).

In interpreting a term used routinely in regulatory language, it is important to first review the use of that term in other parts of the same regulation. For example, "amount financed" is a material disclosure mandated by 15 U.S.C. § 1638(a)(2)(A). Regulation Z describes the "amount financed," using the term "amount" six times within this subsection, and describes the calculation that must be completed in order to accurately disclose it.fn8 The creditor is instructed to: first, determine the "principal loan amount;" second, perform the arithmetic function of adding the principal loan amount to "any other amounts" that are financed; and third, perform the arithmetic function of subtracting any prepaid finance charge. Regulation Z, § 226.18(b). Each of these calculations can be performed only if "amount" is synonymous with "number."

The Official Staff Commentary to § 226.18(b) further supports the notion that any "amount" required by the Regulation must be a number. The phrase, "[a]dding other amounts" is defined to include fees or other charges, such as real estate settlement charges (dollar amounts appearing an the HUD-1) and premiums for voluntary credit life and disability insurance, that are financed into the principal of the loan as part of the transaction. Comment § 226.18(b)(2)-1; see also, Comment 226.18(b)(3)-1 (terms using the word "amount," "face amount," "principal loan amount," and "amount financed" are all expressed as numbers). The analysis that "amount" can only mean "number" is further confirmed by the Board's Model Forms, H-11 & H-12. (See Exhibits 2 & 3).

As another illustration, the disclosure of the "itemization of amount financed" requires creditors to list the components of the amount financed which include:

(i) The amount of any proceeds distributed directly to the consumer.
(ii) The amount credited to the consumer's account with the creditor.
(iii) Any amounts paid to other persons by the creditor on the consumer's behalf....
(iv) The prepaid finance charge.

Regulation Z, § 226.18(c)(emphasis added). It is impossible to comply with this provision unless the "amounts" listed are expressed in numbers. The Commentary confirms this. The creditor may disclose the itemized amounts as "a mathematical progression that depicts the arithmetic relationship of the terms." Official Staff Commentary § 226.18(c)-2(i). It also permits creditors to further itemize the "amount paid directly to the consumer" by subdividing it into the "amount given by check and the amount credited to the consumer's savings account." Official Staff Commentary, § 226.18(c)-2(iv) (emphasis added).

Regulation Z's use of the term "amount" is not ambiguous. These and countless other examples confirm that the word "amount" clearly and unequivocally means only one thing: a number. TILA's disclosure scheme only functions if the word "amount" means a numerical disclosure.

D. Where Regulation Z and the Commentary Mention Balloon Payments, They Intend That a Dollar Amount Be Listed.

Regulation Z and the Commentary specifically address the disclosure of a balloon payment in two places. First, the Commentary discusses balloon payment financing that contains leasing characteristics. See Comment § 226.17(a)(1)-7. The Comment describes a credit sale or loan transaction where the consumer may reduce the dollar amount of the payments to be made during the term of the transaction by agreeing to make a large final payment at the end based upon the expected residual value of the property. See id. The consumer may have other options regarding the final payment in this type of loan, for example, retaining the property and making the final payment, refinancing the final payment, or transferring the property to the creditor in lieu of the final payment. Instead of allowing the creditor to describe these options, the Commentary states: "Thus, disclosures should show the large final payment in the payment schedule and should not, for example, reflect the other options available to the consumer at maturity." Id. Since the disclosure must "show" the large final payment, the Board requires that a numerical figure be used, rather than the creditor describing the balloon as "final payment equals the residual value of the property."

Second, balloon payments in certain mortgage loans are addressed in Regulation Z, § 226.32(c)(3). This regulation imposes additional advance disclosure requirements for high cost loans. Id. Regarding a balloon payment, this special notice must state: "[t]he amount of the regular monthly (or other periodic)

payment and the amount of any balloon payment." Id. In discussing this amendment to the regulation, the Federal Reserve Board identified the balloon disclosure as one of "a few key cost disclosures, such as the APR and the monthly payment (including the maximum payment for variable-rate loans and any balloon payment)." 66 Fed. Reg. 65604, 64610 (Dec. 20, 2001) (emphasis added). Identifying the balloon amount as a "cost" disclosure, grouping it with other key cost disclosures such as the APR and monthly payment, and requiring that the balloon payment be disclosed in conspicuous type size, consistent with other key numerical disclosures, are all clear indicators that the balloon payment must be disclosed as a dollar amount. Finally, the Board's revised model form for Section 32 disclosures includes the following model clause on balloon payments:

"Your regular [frequency] payment will be:

[At the end of your loan, you will still owe us: $ [balloon amount] .]"

Model Sample H-16 (Exhibit 4). The form's inclusion of a dollar sign in front of the "balloon amount" dispels any doubt as to the Board's intention that the balloon disclosure be a numerical dollar figure.

E. The Calculation and Disclosure of the Schedule of Payments Is Impossible Without a Numerical Disclosure of the Payment Schedule

Regulation Z and the Commentary make clear that the calculation of the payment schedule and the total of payments are integrally connected. Neither can be

accurately disclosed unless the payment schedule is disclosed in numerical amounts. The Panel's conclusion that the balloon payment may be disclosed in words fails to recognize this interdependence and treats the payment schedule as a stand alone disclosure unrelated to other numerical disclosures in the federal box. To the contrary, the payment schedule disclosure is the basis for calculating the total of payments.

Regulation Z mandates disclosure of the total of payments as follows: "'The `total of payments, ' using that term, and a descriptive explanation_ such as `the amount you will have paid when you have made all scheduled payments.'" Regulation Z, § 226.18(h) (footnote omitted). The Commentary further instructs that the total of payments is the result of an arithmetic calculation: "[t]he total of payments is the sum of the payments disclosed under § 226.18(g)." Official Staff Commentary § 226.18(h)-2 (emphasis added). One can only "sum" up numbers to determine the total of payments.

The inextricable relationship between 'the payment schedule and total of payments disclosures highlights why the balloon payment "amount" can be disclosed only as a number. If the balloon payment is not listed as a number, the total of payments cannot be calculated. The total of payments is a material TILA disclosure whose inaccuracy entitles a borrower to rescind. Regulation Z § 226.23; fn. 48. Consumers need to know this number because it is part of the cost of the credit.

This point is vividly illustrated by this case. Had The Payment Center calculated the total of payments as instructed by Regulation Z, the federal box of the

TILA disclosure provided to the Carmichaels would have appeared as illustrated below.

ANNUAL PERCENTAGE RATE	FINANCE CHARGE	AMOUNT FINANCED	TOTAL OF PAYMENTS
The cost of my credit as a yearly rate.	The dollar amount the credit will cost me.	The amount of credit provided to me or on my behalf.	The amount I will have paid when I have made all scheduled payments.
12%	$188,716.76	$69,000	$8516.88 + all remaining principal balance

My payment Schedule will be:

Number of Payments	Amount of Payments	When Payments are Due
12 installments of	$709.74 each and the 13th installment of all remaining principal balance.	Approximately 30 days from disbursement date and on same date each month after until paid in full. Last payment may be slightly larger/smaller due to a longer/shorter payment period.

Obviously, the total of payments on the Carmichael's loan was impossible to calculate because the disclosure of the payment schedule provided to the Carmichaels was incomplete. As disclosed above, the sum of the payments shown on the payment schedule is 12 x $709.74 + "a11 remaining principal balance"= $ 8516.88 + "all remaining principal balance." Since disclosure of the "total of payments" unquestionably calls for a numerical figure expressed as a dollar amount, no accurate disclosure of the total of payments could have been provided by the Payment Center consistent with its disclosure of the payment schedule. Thus, both the payment schedule and the total of payments, two material disclosures mandated by TILA, were disclosed inaccurately.

II. THE PANEL'S DECISION HINGES UPON ONE PROVISION IN REGULATION Z DISCUSSING LOANS IN WHICH A SERIES OF PAYMENTS VARIES

The Panel rested its conclusion that the balloon payment need not be disclosed as a number only on Regulation Z §226.18(g)(2)(I). Carmichael v. Payment Ctr., Inc., 2003 U.S. App. LEXIS 14361at *6. The Court concluded that the use of the permissive "may" in §226.18(g)(2)(I) "leads unavoidably to the conclusion that there must be . . . [non-numerical] ways to satisfy the requirement." Carmichael at *7. On this slim reed, the Panel decided that it was "safe" in concluding that "Regulation Z makes clear that there are instances in which a creditor may satisfy the amount requirement without providing a dollar figure." Carmichael at *7- *8 (emphasis added).

A perusal of Regulation Z mandates the opposite conclusion. Regarding the general rule for the disclosure of the payment schedule, section 226.18(g) states: "the creditor shall disclose ... [t]he number, amounts, and timing of payments scheduled to repay the obligation." The plain meaning of this language is illustrated in FRB Model Forms H-11 and 12 (Exhibits 2 & 3), which provide a grid for the schedule of payments disclosure that allows for the insertion of different payment amounts, at different times during the life of a loan. Each payment must have a dollar amount and a date attached to it.

Model Form H-11 shows two different payment amounts, the first payment of $262.03 and the remaining 23 of $235.36. Model Form H-12 exemplifies a situation that is similar to the Carmichaels' loan. It lists 35 payments of $179.53 and, because the last payment differed from the first 35, it lists a final payment of $179.24. The forms provide a vivid example of the Board's insistence that the payment amounts must be listed in numbers and payments that vary from each other must also be stated in numbers. Moreover, the form evinces the Board's intent that consumers need not perform any mathematical calculations in order to understand the cost of the credit. They need and must be provided the numbers to decide if the loan is one they can afford given their monthly income and other expenses.

However, the Panel rests its decision on section 226.18's special disclosure options applicable to more unusual credit transactions. This section identifies two such circumstances - a demand note with no alternate maturity date and a transaction in which a series of

payments varies. In this latter situation, the Regulation Z states that a creditor "may" streamline the schedule of payments disclosure by providing dollar amounts for the largest and smallest payments, and only refer to variations in the others. § 226.18(g)(2)(I). Or the creditor may not use this alternate method and follow the general rule. For example, for a 15 year loan in which the payment will change monthly, a creditor may disclose all 180 separate and different payments to the consumer on the TILA schedule of payments (the general rule) OR it may provide the amount of the highest and the lowest payment and state that the other payments will be somewhere in between (the alternate rule). The Commentary confirms that this "abbreviated disclosure" is an "option" in certain circumstances. Official Staff Commentary § 226.18(g)(2)-1.

Contrary to the interpretation of the Panel, however, under either option dollar amounts must be listed. Reg. Z, §* 226:18. Under both the general and the abbreviated disclosure rules, creditors are required to tell consumers what the dollar amount of their payments will be. The Carmichaels' loan does not call for a series of varying payments. Even if it had, the creditor in this case did not comply with Regulation Z under either rule because it did not list the number of payments with the payment amount in dollars, nor did it disclose the high and low dollar amounts with a description of the variations.

III. THE COURT ERRED IN FINDING THAT THE BALLOON PAYMENT ON THE LOAN COULD BE CALCULATED

The Panel's decision is premised on its belief that a "'reasonable person" could easily have calculated the last payment. This conclusion is belied by significant evidence to the contrary, not the least of which is the fact that the Panel's own calculation of the balloon payment is incorrect.

A. The Two Conflicting Descriptions of the Balloon Payment Result in Different Amounts

Given the disclosures in this case, neither the Carmichaels nor any reasonable consumer could have accurately determined the amount of any balloon. First, the term "balloon" appears nowhere on the loan Note; nor does the Note give any clue that a large sum of money will be owing at the thirteenth payment. It states simply, "the 13th payment, the final payment, of all principal and interest, . . . on the 21st day of April." (emphasis added). (See Ex. 5). In contrast, the TILA disclosure describes the final payment in the payment schedule section as "all remaining principal balance." (See Ex. 6). This portion of the disclosure makes no mention of a "balloon" nor does it provide any indication that the final 13th payment will be an extraordinarily large payment in comparison with the first 12 payments. In fact, the payment schedule leads the reader to believe quite the opposite, that the final payment is only slightly higher or slightly lower than the previous 12: "Last payment may be slightly larger/smaller due to a longer/shorter payment period." (emphasis added). Adding to the confusion, the

last paragraph on this same page uses the word balloon but states that the final payment due on April 21, 2002 will be all unpaid principal and interest. Thus, the TILA document contains conflicting information and part of it conflicts with the Note.

Second, the variation between the descriptions of the final (balloon) payment results in two different calculations of the balloon payment. If the final payment is calculated according to the TILA disclosure as " all remaining principal balance," the balloon payment is $68,749.61.fn9 On the other hand, if the final payment is calculated according to the Note as "all principal and interest," then the balloon payment is $69,437.10.fn10 The two different descriptions of the final payment lead to different "amounts."

This Court recognized the inadequacy of this kind of disclosure in Miller v. McCalla, Raymer, Padrick, Comb, Nichols and Clark, 214 F.3d 872 (7th Cir. 2000), where the plaintiff alleged that the law firm had violated the Fair Debt Collection Practices Actfn11 by failing to state "the amount of the debt" in its collection letter. The letter informed the consumer of the "unpaid principal balance" of the loan and then added that "this amount does not include accrued but unpaid interest. . or other charges . . ." Id at 875. The Court held that a statement of "the unpaid principal balance is not the debt; it is only a part of the debt." (emphasis added). Id. The Court required that the total dollar amount of the debt be stated as of the date of the letter. Id.

TILA recognized that borrowers cannot and are not required to interpret the legal documents that underlie a mortgage transaction. Nor are they required to

perform mathematical calculations to determine the essential terms of their loans. See, Mourning v. Family Publication Service, Inc., 411 U.S. 356 (1973) (while some may think the calculation of the total of payments a relatively easy matter, Congress determined that consumers are in need of protection through the disclosures required by TILA); see also, Rucker v. Sheehy Alexandria, Inc., 228 F. Supp. 2d 711 (E.D.Va. 2002). The TILA disclosure exists precisely to translate legalese into the key information that Congress and the Board deemed essential to a consumer's understanding of the loan transaction. Moreover, the numerical information provided in the TILA disclosure must accurately reflect the legal obligation undertaken by the borrower. Regulation Z, § 226.18(c)). TILA was passed to put an end to the kind of ambiguity present in the Carmichaels' loan. See, Renuart and Keest, Truth in Lending § 1.1.1. It requires that numerical amounts be disclosed and directs how each of the disclosures is to be calculated. The abolition of TILA's numerical amount disclosures would turn the clock back almost four decades, leaving consumers without a credit compass.

B. Only a Few of the "Reasonable" Consumers In the United States Could Perform the Calculations Deemed Necessary by the Panel

The Court relied upon certain assumptions about the math skills of reasonable consumers when deciding that such consumers would have: 1). comprehended what the "balance of unpaid principal and interest to be paid in full" and then subtract the loan amount. White & Mansfield, supra, at 237-238.

In this case, the reasonable consumer could not have

met the Court's first assumption because there are two conflicting descriptions of what the last payment includes and no way to know which is correct. Second, 96% of the adult consumers in this country cannot perform the math in the second of the assumptions. Therefore, neither can a "reasonable" consumer. Third, reasonable consumers cannot be held to know how amortization works if the Court itself cites to a treatise on the subject. Carmichael at *10. Finally, most consumers would not be able to come up with the right answer using a financial calculator, given the math literacy skills of all but a few American adults. Financial calculators are complicated and require reading a handbook to understand the functions. Moreover, this type of calculator assumes that a payment amount entered will be consistent throughout the term and will fully amortize the loan based upon the principal, interest rate, and term entered. To calculate a balloon payment requires one to know what term the creditor assumed when calculating the disclosures. Only then can one use the amortization function of the calculator to determine what is the principal balance after any number of payments." However, it is quite possible that the actual monthly payment pays only the earned interest each month (in which case the principal does not decline) or, worse, that the loan negatively amortizes (the monthly payment does not cover all of the interest earned each month) and the principal increases. In short, there is no way the Carmichaels or any reasonable consumer could have discerned the creditor's assumptions or had the information necessary to calculate the balloon payment.

C. The Court's Calculation of the Balloon Payment Is Inaccurate

Recognizing the variety and complexity of consumer credit, TILA places the burden of calculating and disclosing the material terms on the creditor, not the consumer. See, e.g., Williams v. Chartwell Fin. Services, Ltd., 204 F.3d 748 at 754 (7th Cir. 2000). The best illustration of this complexity is that the Panel became its victim. In an attempt to show the simplicity of the calculation involved, the Court itself made two assumptions about the transaction to reach a balloon payment amount. The amici respectfully suggest that the Court's conclusion is inaccurate.

i. The Panel Relied on the TILA Disclosure Formulation of the Balloon Payment, Not That of the Note

As the Court noted, TILA disclosures must accurately reflect the terms of the legal obligation - i.e., the Note. Carmichael at *13; 12 C.F.R. § 226.17(c)(1). However, as discussed in section III.A., the formula for the balloon payment in the Carmichaels' Note differs from the formula in the TILA disclosure. Since the Panel decision relied on the TILA disclosure's formulation, its calculation was incorrect.

ii. The Panel Decision Calculates the Balloon Payment Based on a 12 Month Loan Term

The Panel's calculation of the balloon payment was also inaccurate because it misapprehended the term of the loan. The term of the Carmichaels' loan is thirteen, rather than twelve, months. According to the terms of

the Note, they are to pay twelve months of payments, and then make the final payment one month later. By that time, they would have been obligated for an additional 30 days of interest to pay off the loan. The Panel's calculation assumes no additional interest was due after the 12th payment and concludes that the principal amount remaining was $68,727.37. See Amortization Schedule, Ex. 7a. However, the true balloon payment according to the Note was $69,437.10 (balance due after 12 payments [$68,749.61] plus the interest accruing since the last payment [$687.49]. See Amortization Schedule, Ex. 7b.

IV. THE CARMICHAELS' TILA DISCLOSURE WAS RIDDLED WITH INACCURACIES

Perhaps the most jarring aspect of the outcome in this case is the global problem: the TILA disclosures provided the Carmichaels are shockingly inaccurate.fn13 Summarizing the defects in five material disclosures:

Finance Charge: The Payment Center overstated the finance charge by over $180,000. Both the Panel and the district court apparently determined that this was the result of a slip of the finger. Carmichael v. Payment Ctr., Inc. 2002 U.S. Dist. Lexis 18835at *3 fn.2 (N.D.Ill. 2002) Despite the fact that the overstatement made the disclosure grossly inaccurate, TILA treats overstatements of the finance charge as accurate.fn14

Amount Financed: Assuming the $300 document preparation fee was properly excluded from the Finance Charge calculation, this disclosure was correct.

Annual Percentage Rate: As can be seen from the attached amortization schedules, Exhibits 7a & 7b, the APR on the Carmichaels' loan is also subject to question. The APR varies depending on whether or not the final balloon payment included principal and interest or just principal. Again, without disclosure of the final balloon payment, an accurate determination of the APR is nearly impossible.

Schedule of Payments: The Payment Center undisputedly failed to disclose either the correct numerical or the correct descriptive "amount" of the final balloon payment. The Panel believed the reasonable consumer could calculate this number on his/her own. As illustrated herein, the Panel itself miscalculated the balloon payment. Moreover, as discussed in section I. E., the absence of a disclosure of the numerical amount of the balloon payment made the payment schedule materially inaccurate and calculation of the Total of Payments impossible.

The Payment Schedule fails to accurately reflect the legal obligation contained in the Note in other ways that render it materially inaccurate. See Regulation Z, §226.17(c)(1). While the Note provides explicit due dates for payments, identifying the first payment of $709.74 as owing on April 21, 2001, the next 11 payments as owing on the 21st day of each month thereafter and the 13th and final payment as owing on April 21, 2002, the Schedule of Payments TTLA disclosure failed to provide the Carmichaels with any of these due dates.fn15 See Exhibits 5 & 6. Under "When Payments are Due" it states: "Approximately 30 days from disbursement date and on same date each month after until paid in full. Last payment may be slightly

larger/smaller due to a longer/shorter payment period." This is in direct conflict with the Official Staff Commentary 226.18(g)-4, which mandates disclosure of due dates unless the beginning payment date is unknown.

This case is distinguishable from Clay v. Johnson, 264 F.3d 744 (7th Cir. 2001) which, as the Panel points out, found that precise due dates are not required by TILA. First, in this case it is clear that the Payment Center knew the due dates since they are included on the Note. There was no good reason not to disclose them. Second, "approximately" is just not good enough when a consumer will be obligated to pay daily interest to a lender for every day beyond the actual due date the payment is not received. Finally, the due dates calculated according to the description on the Carmichaels' schedule of payments are at odds with the due dates on the Note. The Carmichaels' loan closed on March 21, 2001. Disbursement would take place three business days later on March 24, 2001. According to the TILA disclosure, the first due date was thirty days from that date or April 23, 2001, not April 21, 2001 as indicated on the Note. Thus, the Payment Schedule is materially inaccurate for multiple reasons.

Total of Payments: The Payment Center misdisclosed the Total of Payments. The Panel concluded that this was an "excused" overdisclosure based on overdisclosure of the finance charge; however, as demonstrated above, the total of payments could never have been accurately disclosed since Regulation Z requires that the total of payments be calculated as the sum of the amounts disclosed in the payment schedule. Adding the 12 monthly payments and the dollar amount of the balloon owing as the 13th and final payment is an

impossibility as illustrated, because the balloon payment was disclosed using words instead of numbers. See section I.E. Thus, since an arithmetic sum cannot be computed by adding numbers to words, the total of Payments disclosure was inaccurate. It was a separate and independent error which is not excused in TILA.

The Payment Center got all but one or twofn16 of TILA's five material disclosures wrong, in some cases by hundreds of thousands of dollars. Turning a blind eye to this massive non-compliance serves neither the consumer nor the credit marketplace.

CONCLUSION

Amici urge that the Petition for Rehearing and Suggestion for Rehearing En Banc be granted and that the portion of the Panel decision that determined that the schedule of payments need not be disclosed as a number be appropriately vacated. Otherwise, Amid have no interest in the final disposition of this case.

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ATTORNEYS FOR AARP & NATIONAL CONSUMER LAW CENTER

Footnotes

fn1 15.U.S.C. § 1601 et seq.

fn2 This letter was not brought to this Court's or the district court's attention.

fn3 15 U.S.C. § 1602(u).

fn4 12 C.F.R. § 226.1 et. seq.

fn5 Carmichael v. Payment Ctr., Inc., 2003 U.S. App. LEXIS 14361 at * 10-* 11.

fn6 12 C.F.R. Part 226, Supplement I, Comment I-3.

fn7 The calculation that "amount" appears 604 times in Regulation Z and the Commentary was made by running the "Focus" function on a LEXIS search of 12 C.F.R. Part 226.

fn8 "Amount financed." The amount financed, using that term, and a brief description such as the amount of credit provided to you or on your behalf." Regulation Z, § 226.18(b).

fn9 This number was calculated using the computer program Consumer Law Math, copyrighted by William Redak and Richard Feferman, and licensed to the National Consumer Law Center. To obtain the principal balance after 12 payments of this 13 payment loan, one plugs in the amount financed of $69,000, then lists the number of payments as 13, adds the amount of the most common monthly payment, and leaves the "amount of any irregular final payment" blank because

that amount is not disclosed. Then one clicks on the "calculate" button and the APR appears. The schedule of payments and amortization chart can be printed. The printout shows a principal balance after 12 months of payments of $68,749.61. Ex. 7a.

It is important to note that calculating program is no longer included on the CD-ROM accompanying NCLC's Truth In Lending treatise. The program currently used cannot perform this calculation without knowing the amount of the balloon payment.

fn10 Using the Redak and Feferman program, the printout of the amortization shows the principal of $68,749.61 plus interest from the 12th to the 13th payment of $687.49 which total $69,437.10. Ex.7b.

fn11 15 U.S.C. § 1692, et seq.

fn12 This description reflects how two calculators from the two leading financial calculator companies work. See HP 10BII (Hewlett Packard) and BA Real Estate (Texas Instruments).

fn13 The Payment Center attempts to distinguish its loan from the one found defective in Mills v. Home Equity Group, Inc. on the theory that: (1) the disclosure in Mills did not disclose the number of payments or the amount of the final payment; and (2) the TILA violations in Mills were "extensive." 871 F. Supp.1482 (D.D.C. 1994); Brief for Appellee at 16-17. The Payment Center gives itself too much credit. As illustrated, its schedule of payments did not provide the dates on which the payments were due nor did it provide the amount of the final balloon. Further, the Payment Center's disclosure

was riddled with other major violations.

fn14 While TILA grants tolerance, and therefore immunity, to creditors who overdisclose the finance charge, this immunity only applies to private actions by consumers. Section 1607(e) provides that any creditor who overstates a finance charge by more than one quarter of one percent is subject to an agency enforcement action.

fn15 The Payment Center inserted details about the payments at the bottom of page 1 of the TILA disclosure. Ex. 6. This statement of the schedule of payment conflicts both with the Note and with the Federal Box disclosure at the top of the TILA disclosure in that it states that the first payment of $709.74 will be due on April 21, 2001 and $709.74 on the 21st of each month thereafter for 12 months, with the 13th payment being due on April 21, 2002, at which time "the balance of all unpaid principal and interest to be paid in full." This contradicts the TILA disclosure in that it recites 13 payments of $709.74, plus principal and interest. It contradicts the Note in that the Note calls for 12 payments of $709.74 plus a 13th installment of "all remaining principal balance." See Ex. 5.

fn16 See discussion above about uncertainty of APR calculation.

CERTIFICATION REGARDING RULE 32

I hereby certify that this brief does not comply with the type-volume limitation Fed. R. App. Proc. 32(a)(7)(B) as it applies to amicus briefs. There are 6463 words in the brief. Amici have sought an Order from the Court expanding the word limit.

This brief complies with the typeface requirements of Fed. R. App. Proc. 32(a)(5) and the type style requirements of Fed. R. App. Proc. 32(a)(6) because is has been prepared in a proportionally spaced typeface using Word Perfect 10 in Times New Roman 14.

Jean Constantine-Davis

CERTIFICATE OF SERVICE

I hereby certify that on August 13, 2003, a copy of the foregoing document was sent via first class U.S. Mail to:

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Riverside, Illinois 60546

O. Randolph Bragg
Adam M. Mergenthaler
HORWITZ, HORWITZ & ASSOC.
25 E. Washing St., Suite 900
Chicago, IL 60602

Jean Constantine-Davis

EXHIBITS

Exhibit l: Federal Reserve Board letter # 467, April 19, 1971 from. G. Garwood

Exhibit 2: FRB Model Form H-11

Exhibit 3: FRB Model Form H-12

Exhibit 4: FRB Model Form H-16

Exhibit 5: Note, dated March 21, 2001, between Payment Center and the Carmichaels

Exhibit 6: Truth-in-Lending Disclosures, dated March 21, 2001

Exhibit 7a: Amortization table assuming terms from Note (balloon payment includes principal and interest)

Exhibit 7b: Amortization table assuming terms from TILA disclosure (balloon payment amount is remaining principal)

Appendix E

TRUTH-IN-LENDING MANUAL

The right of rescission in Regulation Z applies with certain exceptions, whenever a security interest arises in the customer's principal residence in connection with a consumer credit transaction. If the savings and loan association is making a direct loan to the consumer the right would not be applicable, although a security interest in the nature of a contractor's mechanics, or materialman's lien might to retained by the contractor. The home improvement contract and financing would be viewed as separate transactions However, if the contractor is arranging for the extension or credit as provided in Section 226.2(f) of Regulation Z, then the home improvement contract and financing would be viewed as a single transaction which is subject to the right of rescission.

For the contractor to arrange for the extension of credit under Section 236.2(f) he must have received a fee, compensation, or other consideration for such service, or have knowledge of the credit terms and participate in the preparation of contract documents required in connection with the extension of credit. The fact that the check from the savings and loan association is made payable jointly to the customer and the contractor would not make the contractor an "arranger" if he did not otherwise fit the definition. In other words, if the contractor does not arrange for the extension of credit the right of rescission would not be applicable.

Griffith G. Garwood, Attorney

No. 469

"AMOUNT" OF PAYMENTS Sec. 226.8(t)

April 19,1971

This is in reply to your letter in which you inquire whether the requirement of Section 226.8 (b)(3) that the "amount" of the payments be shown is satisfied by the following statement where interest is computed on a simple interest basis:

"$ plus interest on December 10, 19_
$ plus interest on December 10,19_
The remaining unpaid balance plus interest on December 10, 19_"

In the staff's view, the requirement that the creditor disclose the "amount" of the payment, requires him to compute and disclose the dollar amount of each payment. Accordingly, the above quoted language would not meet the disclosure requirements of Regulation Z.

Griffith L. Garwood, Attorney

No. 470

DISCLOSURES AT TIME APPLICATION SOLICITED Sec.7(a)

April 12, 1971

This is in response to your letter regarding an alleged violation of the Truth-in-Lending Act. You indicate that an agent of your office, upon being offered an application for a credit card issued by, was not able to obtain the Truth-in-Lending disclosures relating to the operation of the account. Section 226.7(a) of Regulation Z prescribes that the initial disclosures for open end credit must be given to the customer "before the first transaction is made..." Consequently, the bank's failure to provide the Section 226.7(a) disclosure at the time of offering the application for a credit card would not constitute a violation of Regulation Z. We assume that the bank issues the required disclosures before the first transaction, is made on the account. In the event this is not the case, we would appreciate your letting us know so that we may follow-up on the matter.

Griffith L. Garwood, Attorney

No. 471

REDUCTION IN AFR

Sec. 226.8
Sec. 226.827

April 30, 1971

This is in response to your letter concerning the disclosure responsibilities of your client who is considering reducing the annual percentage rate on outstanding mortgages from 8% to 7 or 7-1/2%.

Interpretation Section 226.817 of Regulation Z provides that if no other credit terms are changed a reduction in the annual percentage rate does not constitute a new transaction requiring new disclosures. Therefore, if the reduction in rate mentioned in your letter is the only change in the previously disclosed credit terms, other than the accompanying reduction in

Regulation Z

H-II-Installment Loan Sample

Friendly Bank & Trust Co.
700 East Street
Little Creek, USA

Lisa Stone
22-4859-22
300 Maple Avenue
Little Creek, USA

ANNUAL PERCENTAGE RATE	FINANCE CHARGE	AMOUNT FINANCED	TOTAL PAYMENTS
The cost of your credit as a yearly rate.	The dollar amount the credit will cost you.	The amount of credit provided to you or on your behalf.	The amount you will have paid after you made all payments as scheduled.
12%	$675.31	$5,000	$5675.31

You have the right to receive at this time an itemization of the Amount Financed.

___I want an itemization.
___I do not want an itemization.

Your payment schedule will be:

Number of Payments	Amount of Payments	When Payments Are Due
1	$262.03[e]	6/1/81
23	$235.36	Monthly beginning 7/1/81

Late Charge: If a payment is late, you will be charged $5 or 10% of the payment, whichever is less.

Prepayment: If you pay off early, you may
___ may not have to pay a penalty.

Required Deposit: The annual percentage rate does not take into account your required deposit.

See your contract documents for any additional information about nonpayment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.

[e] means an estimate

H-12-Refinancing Sample

Everyone's Credit Union

ANNUAL PERCENTAGE RATE	FINANCE CHARGE	AMOUNT FINANCED	TOTAL OF PAYMENTS
The cost of your credit as a yearly rate.	The dollar amount the credit will cost you.	The amount of credit provided to you on your behalf.	The amount you will have paid after you have made all payments as scheduled.
15%	$1285.06	$5177.73	$6463.79

Your payment schedule will be:

Number of Payments	Amount of Payments	When Payments Are Due
35	$179.53	Monthly starting 5-1-81
1	$179.24	4-1-84

Insurance

Credit life insurance and credit disability insurance are not required to obtain credit, and will not be provided unless you sign and agree to pay the additional cost.

TYPE	PREMIUM	SIGNATURE
Credit Life		I want credit life insurance. _____ Signature
Credit Disability	$177.73	I want credit disability. _____ Signature

Security: You are giving a security interest in:

___ the goods or property being purchased.
your automobile.

Late Charge: If a payment is late, you will be charged 20% of the interest due with a minimum charge of $.05.

Prepayment: If you pay off early, you will not have to pay a penalty.

See your contract documents for any additional information about nonpayment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.

[e] means an estimate

Itemization of the Amount Financed of $5177.73

$ 1000 Amount given to you directly
$ 3000 Amount paid on your account

Amount paid to others on your behalf

$ to public officials.
$ 500 to Coop Credit Union

$ 500	to Acme Finance Co.
$ 177.73	to Pan-Galactic Ins. Co.
$	for credit report
$	Prepaid finance charge

H-16-Mortgage Sample

You are not required to complete this agreement merely because you have received these disclosures or have signed a loan application. If you obtain this loan, the lender will have a mortgage on your home. You could lose your home, and any money you have put into it, if you do not meet your obligations under the loan.

The annual percentage rate on your loan will be _____ %.
Your regular (frequency) payment will be $.
[Your interest rate may increase. Increases in the interest rate could increase your payment. The highest amount your payment could increase is to $.]

APPENDIX I-Federal Enforcement Agencies

The following list indicates which federal agency enforces Regulation Z for particular classes of businesses. Any questions concerning compliance by a particular business should be directed to the appropriate enforcement agency. Terms that are not defined in the Federal Deposit Insurance Act (12 USC 1813(s)) shall have the meaning given to them in the International Banking Act of 1978 (12 USC 3101).

National banks and federal branches and federal agencies of foreign banks
District office of the Office of the Comptroller of the Currency for the district in which the

institution is located

State member banks, branches and agencies of foreign banks (other than federal branches, federal agencies, and insured state branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act

address of the FTC regional office in which they operate.)

Division of Credit Practices
Bureau of Consumer Protection
Federal Trade Commission
Washington, D.C. 20580

APPENDIX l-Annual Percentage Rate Computations for Closed-End Credit Transactions

(a) Introduction.

(1) Section 226.22(a) of Regulation Z provides that the annual percentage rate for other than open-end credit transactions shall be determined in accordance with either the actuarial method or the United States Rule method. This appendix contains an explanation of the actuarial method as well as equations, instructions and examples of how this method applies to single-advance and multiple-advance transactions.

INSTALLMENT NOTE

Identification No. C804

$69.000.00

March 21, 2001

FOR VALUE RECEIVED, the undersigned promise(s) to pay to order of the Bearer of this Note, the principal sum of Sixty-Nine Thousand Dollars & 00/90's ($69,000.00) and interest from 03-20-2001 on the balance of the principal remaining from time to time unpaid at the rate of 12.00% percent per annum, such principal sum and interest to be payable in installments as follows. "Seven Hundred Nine Dollars & 74/00's ($709.74) Dollars on the 21st day of April, 2001 and Seven Hundred Nine Dollars & 74/00's ($709.74) on the 21st day of each month thereafter for 12 months, except that the 13th payment, the final payment, of all principal and interest, if sooner paid, shall be due on the 21st day of April 2002.

All such payments on account of the indebtedness evidenced by this Note shall be applied first to late charges, costs and/or attorneys' fees, if any; then to accrued and unpaid interest on the unpaid principal balance; and then to principal. Unless the legal holder of this Note so agrees in writing, no payment in excess or the installment amount referenced above shall serve to abate, delay, suspend or otherwise affect the undersigned's obligation to timely pay, in full, any subsequent installment required hereunder; instead, the excess shall be applied in accordance with the first sentence of this paragraph.

Any payment not paid by the tenth day after said payment is due will be assessed a late charge of 5% : the amount or the overdue payment, for each and every month said payment is late.

Payments are to be made to PAYMENT CENTER, INC. - P.O. Box 6661- Broadview, IL 60155, or any such other place as the legal holder of this Note may from time to time in writing appoint.

The payment of this Note is secured by a Mortgage, bearing even date herewith, in favor of PAYMENT CENTER, INC. on real estate in the County of Cook, State of Illinois.

At the election or the legal holder hereof and without notice, the principal sum remaining unpaid hereon, together with any late charges, costs, attorneys' fees and accrued interest thereon, shall become at once due and payable at the place of payment aforesaid in case default shall occur in the payment when due, of any installment of principal or interest in accordance with the terms hereof or in case default shall accrue and continue for three days in the performance of any other agreement contained in said Mortgage (in which event election may be made at any time after the expiration of said three days without notice.)

All parties hereto severally waive presentment for payment, notice of dishonor, protest and notice of protest.

The undersigned agree(s) to pay all expenses, including court costs and attorneys' fees, attributable to the holder's enforcement of any of the provisions of

this installment Note or the mortgage securing the obligations hereof, regardless of whether suit is filed for that purpose.

Harry Carmichael

Louise Carmichael

LENDER'S NAME & ADDRESS

Payment Center, Inc.
P.O. Box 6661 Broadview, IL 60155

BORROWER'S NAME & ADDRESS:

Harry & Louis Carmichael (J)
1114 No: Lombard Ave.
Oak Park, nun Illinois 60302

Loan No.: C-804
Date: March 20, 2001
Job No.: FRI370

TRUTH-IN-LENDING DISCLOSURES
"I" Means Borrower and "You" means the Lender

ANNUAL PERCENTAGE RATE	FINANCE CHARGE	AMOUNT FINANCED	TOTAL OF PAYMENT
The cost of my credit at a yearly rate.	The dollar amount the credit will cost me.	The amount of credit provided to me or on my behalf.	The amount I will be paid when I have made all scheduled payments.
12.00	$188,716.76	$69,000.00	$257,716.76

I have the right to receive this at this time an itemization of the Amount Financed

I do do not want an itemization.

*does not include any deposits paid to contractor
My payment Schedule will be:

Number of Payments	Amount of Payments	When Payments are Due
12 installments or	$709.74 each and	Approximately 30 days from disbursement date and on same date each month after until paid in full. Last payment may be slightly larger/smaller due to a longer/shorter payment period.
	the 13th installment of all remaining principal balance.	

Demand: This loan has a demand feature.

Security: I am giving a security interest in:, (brief description of other property)

Real property located at: 1114 N. Lombard, Oak Park, Ill.

Late Charges: If a payment is late I well be charged 5% of the monthly payment amount after 10 days and for each and every month thereafter until such payment is made.

PREPAYMENT: If I pay off this loan early, I may will not have to pay a penalty I may will not be entitled to a refund of part of the finance charge.

Assumption: Someone buying my house may, subject to conditions, be allowed to can not assume the remainder of the mortgage on the original terms.

PAYMENTS: I agree to pay this note in 12 monthly installments of $709.74 each with a balloon payment of all principal and interest to be made on or before the 13th installment. First installment being due April 21, 2001 and $709.74 on the 21st of each month thereafter for 12 months, with the 13th payment being due on April 21, 2002, at which time the balance of all unpaid principal and interest to be paid in full. The final payment of all unpaid principal and interest will be due on April 21, 2002, if not sooner paid.

CREDIT LIFE INSURANCE - Credit life insurance and credit disability insurance are not required to obtain credit, and will me be provided unless I sign and agree to pay the additional costs.

TYPE	PREMIUM	TERM
Credit Life	.00	0
Credit Disability	.00	0
Joint Credit Life	.00	0

I do do not want credit life insurance.
I do do not want credit life insurance.
DOB

I do do not want credit life insurance.
DOB

I do do not of want credit insurance.

PROPERTY INSURANCE – I may obtain property insurance from anyone I want that is acceptable to you. If I get life insurance from or through you I will pay $ for of coverage.

FLOOD INSURANCE - Flood insurance is / is not required.

I may obtain flood insurance from anyone that I want that is acceptable to you. If you get the insurance from or through you I will pay $ for of coverage.

ITEMIZATION OF AMOUNT FINANCED

Amount given to me directly $ none

Amount paid on my (loan account) $

Father & Sons Remodelers, Inc. (Balance due on contract)	$ 68,700.00
Document Fees	$ 300.00
Amount financed	$ 69,000.00

(Add all items financed and subtract prepaid finance charges.)

BY SIGNING BELOW I ACKNOWLEDGE RECEIPT OF A COPY OF THE DISCLOSURE ON INDICATED PAGE 1.

Harry Carmichael
Louis Carmichael

DATED THIS 21st day of March, 2001.

Schedule of Payments

Prepared using software associated with the publications of the National Consumer Law Center

July 31, 2003

Amount Financed: $69,000.00
Finance Charge: $8,953.98
Total of Payments: $77,953.98
Amount of most common payment: $709.74
Number of Payments (Monthly): 13
Number of days in irregular first payment: NA
Amount of any irregular first payment: NA
Amount of any irregular final payment: $69,437.10
Annual Percentage Rate (APR): 11.9999% (12.00%)

Pmt #	Month	Payment	Applied to Interest	Applied to Principal	Remaining Balance
Year # 1					
1	1	$709.74	$639.90	$69.84	$68,930.16
2	2	$709.74	$639.26	$70.48	$68,859.68
3	3	$709.74	$638.60	$71.14	$68,788.54

4	4	$709.74	$637.94	$71.80	$68,716.74
5	5	$709.74	$637.28	$72.46	$68,644.28
6	6	$709.74	$636.61	$73.13	$68,571.15
7	7	$709.74	$635.93	$73.81	$68,497.34
8	8	$709.74	$635.24	$74.50	$68,422.84
9	9	$709.74	$634.55	$75.19	$68,347.65
10	10	$709.74	$633.85	$75.89	$68,271.76
11	11	$709.74	$633.15	$76.59	$68,195.17
12	12	$709.74	$632.44	$77.30	$68,117.87
		Totals for year 1	$7,634.75	$882.13	
Year # 2					
13	1	$68,749.59	$631.72	$68,117.87	$.00
		Totals for year 2	$631.72	$68,117.87	
		Total for all years	$8,266.47	$69,000.00	

Schedule of Payments

Prepared using software associated with the publications of the National Consumer Law Center

July 31, 2003

Amount Financed: $69,000.00
Finance Charge: $8,266.49
Total of Payments: $77, 266.49
Amount of most common payment: $709.74
Number of Payments (Monthly): 13
Number of days in irregular first payment: NA
Amount of any irregular first payment: NA
Amount of any irregular final payment: $68,749.61
Annual Percentage Rate (APR): 11.1288% (11.13%)

Pmt #	Month	Payment	Applied to Interest	Applied to Principal	Remaining Balance
Year # 1					
1	1	$709.74	$690.00	$19.74	$68,980.26
2	2	$709.74	$689.80	$19.94	$68, 609.32
3	3	$709.74	$689.60	$20.14	$68,940.18

4	4	$709.74	$689.40	$20.34	$68,919.84
5	5	$709.74	$689.20	$20.54	$68,899.30
6	6	$709.74	$688.99	$20.75	$68,878.55
7	7	$709.74	$688.78	$20.96	$68,857.59
8	8	$709.74	$688.57	$21.17	$68,836.42
9	9	$709.74	$688.36	$21.38	$68,815.04
10	10	$709.74	$688.15	$21.59	$68,793.45
11	11	$709.74	$687.93	$21.81	$68,771.64
12	12	$709.74	$687.71	$22.03	$68,749.61
		Totals for year 1	$8,226.49	$250.39	
Year # 2					
13	1	$69,437.10	$687.49	$68,749.61	$.00
		Totals for year 2	$687.49	$68,749.61	
		Totals for all years	$8,953.98	$69,000.00	

(2)

Supreme Court, U.S.
FILED
MAR 8 - 2004
OFFICE OF THE CLERK

No. 03-955

IN THE

Supreme Court of the United States

HARRY CARMICHAEL, *et ux.*,

Petitioners,

v.

PAYMENT CENTER, INC.,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF IN OPPOSITION

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QUESTION PRESENTED

The legal position set forth in the Petition for Certiorari is frivolous. The Petition argues that the court below erred when it failed to follow legal authority that has been defunct for many years. However, for purposes of correct form, Respondent offers the following statement of the issue:

Whether the deference doctrine stated in *Ford Motor Credit Company v. Milhollin*, 444 U.S. 555 (1980) requires that courts afford deference to Federal Reserve Board interpretations of TILA which have been revoked.

STATEMENT PURSUANT TO RULE 29.6

Respondent, Payment Center Inc., has no parent corporation and no publicly held company owns 10% or more of its stock.

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15 U.S.C. § 1635(f) 2

15 U.S.C. § 1638(a)(4) 2

15 U.S.C. § 1638(a)(6) 2

Regulations:

12 C.F.R. § 226 5

12 C.F.R. § 226.18(g) 6, 7

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Other Authorities:

34 Fed. Reg. 2008 (1969) 8

46 Fed Reg. 20848, 20849 (1981) 5, 9

FRB Letter No. 469, April 19, 1971, by Griffith L. Garwood ..... *passim*

STATEMENT OF THE CASE

A. FACTS

In March 2001, Payment Center, Inc. (hereafter "PCI") lent the Carmichaels $69,000 for home remodeling, which they secured through a mortgage on their home. The promissory note called for a series of 12 monthly payments of $709.74, followed by a final balloon payment of "all remaining principal and interest" in the 13th month. The Carmichaels had the option of early repayment. Both parties expected that Carmichaels would obtain refinancing at some time during the life of the loan and payoff whatever balance remained due at that time. Thus, at the time the loan was made, neither party really knew what would be its duration and an accurate final payoff figure could not be ascertained.

In an effort to comply with the Truth in Lending Act, 15 U.S.C. § 1601, *et seq.*, (hereafter "TILA"), PCI submitted a TILA statement to Carmichaels that was accurate except for two glaring errors: it vastly *overstated* the finance charge as $188,716.76 on a one year loan of $69,000, and similarly overstated Carmichael's total of payments. Despite these obvious overstatements, Carmichaels elected not to shop for a better deal and executed the loan contract with PCI. Carmichaels thereafter made regular monthly payments of $709.74 until October of 2001. At that time, Carmichaels abruptly attempted to rescind the loan, demanding money damages, attorney fees and the return of all amounts paid to PCI.

B. PROCEEDINGS BELOW

PCI rebuffed these avaricious demands and Carmichaels sued, claiming that PCI violated the TILA by failing to disclose the amount of the 13th payment in violation of 15 U.S.C. § 1638(a)(6), by failing to accurately state the annual percentage rate in violation of 15 U.S.C. § 1638(a)(4), and by failing to allow Carmichaels to rescind the loan in violation of 15 U.S.C. § 1635(f). The district court dismissed all of Carmichaels' claims on PCI's motion for summary judgment. An appeal followed, and the court below affirmed.

The Petition for Certiorari seeks review of only one aspect of the proceedings below: whether PCI violated 15 U.S.C. § 1638(a)(6), as interpreted by the Federal Reserve Board, by describing the thirteenth and final payment in words, rather than in a dollar amount.

SUMMARY OF ARGUMENT

The Petition in this matter states a frivolous legal argument. The Petition is premised upon a single letter by a Federal Reserve staff attorney which is represented as authoritative. However, the letter is not authoritative, as the Federal Reserve Board has formally revoked it, and arguments based in its authority are meritless.

The Petition argues that the lower court erred when it held that Payment Center could, under current Truth in Lending laws and implementing regulations, disclose the amount of a balloon payment in a narrative description rather than in a specific dollar figure. In support of this argument, the Petition cites a single Federal Reserve staff letter, circa 1971. The Petition argues that by failing to follow the

1971 Letter, the lower court offended the deference doctrine set forth in *Ford Motor Credit Company v. Milhollin*, 444 U.S. 555 (1980). Not only does this argument ignore the Federal Reserve's revocation of the 1971 Letter, it also ignores that the regulation addressed by the 1971 Letter has been superseded by a less stringent successor regulation, which allows for disclosures to be made in words rather than figures, under some circumstances.

Certiorari should also be denied for a more basic reason. The Petition offers no argument regarding why this case is worthy of Supreme Court review but instead merely complains of the outcome below. Moreover, the Petition actually demonstrates why this Court's review is not warranted. The Petition, in arguing that the Federal Reserve Board has the regulatory power to undo the lower court's opinion by regulation, shows that there is another, more appropriate forum in which to address the issue at hand. That forum, the Federal Reserve Board, was created for the express purpose of deciding such questions, and has undertaken efforts to address the vary issue raised by the Petition. The issue is therefore unworthy of this Court's attention.

For these reasons, the Petition should be denied.

REASONS FOR DENYING THE PETITION

I. THE SOUL AUTHORITY OFFERED IN SUPPORT OF THE PETITION HAS BEEN REVOKED AND CARRIES NEITHER BINDING NOR PERSUASIVE AUTHORITY.

A. The 1971 Letter Offered by the Petition Lacks Binding Authority.

The Petition for Certiorari in this matter materially misstates the law in as much as it offers the following Federal Reserve staff letter as binding authority:

> This is in reply to your letter of April 5, 1971, in which you inquire whether the requirement of § 226.8(b)(3) [¶ 3566] that the "amount" of the payments be shown is satisfied by the following statement where interest is computed on a simple interest basis.
>
> > $ . . . . . plus interest on December 10, 19__
> >
> > $ . . . . . plus interest on December 10, 19__
> >
> > The remaining unpaid balance plus interest on December 10, 19__ .
>
> In the staff's view, the requirement that the creditor disclose the "amount" of the payment, requires him to compute and disclose the dollar

> amount of each payment. Accordingly, the above quoted language would not meet the disclosure requirements of Regulation Z.

FRB Letter No. 469, April 19, 1971, by Griffith L. Garwood (hereafter "1971 Letter" or "Letter"). The Federal Reserve Board officially revoked the authority of this Letter and others like it when, in 1982, it replaced them with an official staff commentary to "Regulation Z", which is the regulation that the Federal Reserve has promulgated to implement TILA (generally, 12 C.F.R. § 226, *et seq.*):

> An official commentary to the regulation, to be published in the near future, will incorporate those Board and staff interpretations previously issued on [old] regulation Z that remain applicable to the new regulation. The commentary, which will be issued in the form of an official staff interpretation, will provide additional guidance regarding application of the regulation. . . .
>
> The Board and staff interpretations that have been issued under the [old] regulation will continue to be effective until April 1, 1982. . . . **Those interpretations and letters will thereafter be revoked as of that date**.

Federal Register, Vol. 46, No. 66, Tuesday, April 7, 1981, pp. 20848, 20849 (emphasis added). This excerpt makes clear that the Federal Reserve Board revoked any prior staff interpretation or letter not incorporated into the official staff commentary, effective April 1, 1982. Petitioners site no section of the current TILA, Regulation Z or FRB official staff commentary for the proposition that "amount" always

means "dollar figure". This is because there is no such language to be found. If the letter offered by Carmichaels truly stands for that proposition, then that proposition was rejected when the Federal Reserve elected not to incorporate it into Regulation Z or the official staff commentary that replaced such letters in 1982.

In light of the foregoing, it is self-evident that the opinion below could not, on the basis of the 1971 Letter, run counter to the deference doctrine set forth in *Ford Motor Credit Company v. Milhollin*, 444 U.S. 555 (1980), as the Letter offers nothing to which the court below could have deferred. There is, therefore, no relationship between the stated issue in the Petition and those presented in the pending case of *Household Credit Servs. v. Pfennig*, 123 S. Ct. 2639 (June 27, 2003).

B. The 1971 Letter Carries no Persuasive Authority Because it Interprets a Superseded Regulation.

The 1971 Letter likewise cannot be afforded any persuasive authority because the regulation it interprets has been superseded by a less stringent regulation that was designed to make TILA compliance easier for creditors.

The Panel's opinion interprets part of Regulation Z, specifically 12 C.F.R. § 226.18(g), which tells creditors what they must disclose to consumers with respect to payment schedules of loans:

> (g) Payment Schedule. The number, amounts, and timing of payments scheduled to repay the obligation.

(1) In a demand obligation with no alternate maturity date, the creditor may comply with this paragraph by disclosing the due dates or payment periods of any scheduled interest payments for the first year.

(2) In transaction in which a series of payments varies because a finance charge is applied to the unpaid principal balance, the creditor may comply with this paragraph by disclosing the following information:

(i) The dollar amounts of the largest and smallest payments in the series.

(ii) A reference to the variations in the other payments in the series.

12 C.F.R. § 226.18(g). This regulation has been in place since Congress and the Federal Reserve substantially amended TILA and Regulation Z in 1981. Prior to the 1981 Amendments, the closest equivalent to the current § 226.18(g) to be found in Regulation Z was as follows:

226.8(b) Disclosures in sale and nonsale credit. In any transaction subject to this section, the following items, as applicable, shall be disclosed:

(3) The number, amount, and due dates or periods of payments scheduled to repay the indebtedness and, except in the case of a loan secured by a first lien or equivalent security interest on a dwelling made to finance the purchase of that dwelling and except in the case of a sale of a dwelling, the some

> of each such payments using the term "total payments." If any payment is more than twice the amount of an otherwise regularly scheduled equal payment, the creditor shall identify the amount of such payment by the term "balloon payment" and shall state the conditions, if any, under which that payment may be refinanced if not paid when due.

Federal Register, Vol. 34, No. 28, Tuesday, February 11, 1969, p. 2008. The 1971 Letter identifies the above as precisely the section of Regulation Z that it addresses. The difference between this older version of Regulation Z and its modern counterpart is immediately apparent. As of 1971, Regulation Z did not allow payment descriptions by reference to "dollar amounts of the largest and smallest payments in the series" or to "the variations in the other payments in the series," which is the modern language upon which the court below relied. It is no wonder that a Federal Reserve staff letter dated 1971 would differ with the court below, since a materially different regulation was considered.

Any claimed persuasive authority for Carmichaels letter is further erased when one examines the reasons for the 1981 amendments to Regulation Z. The specific purpose of the 1981 amendments was to make compliance easier for creditors and to reduce the number of technical lawsuits like the one filed by Carmichaels below. About these amendments, the Federal Reserve said the following:

> The Board is adopting a complete revision of its Regulation Z. . . . The revision implements the Truth in Lending Simplification and Reform Act . . . and substantially alters the requirements and the structure of the current regulation.

* * *

> Although the Act has been revised several times since its adoption in 1968, the Simplification act marked the first concerted effort by Congress, partly on the basis of recommendations from the Federal Reserve Board, to reduce federal Truth in Lending requirements. Among its major provisions are (1) a significant reduction in consumer credit disclosures, ...
>
> * * *
>
> . . . it has become increasingly evident that the act has imposed highly complex and technical requirements on creditors, produced disclosures that sometimes obscured the important information to consumers, and generated costly and burdensome litigation over technical interpretations of the regulation.
>
> * * *
>
> The revised regulation addresses these concerns in its **emphasis on . . . reducing the number of technical disclosure burdens placed on creditors**.

Summary and Supplemental Information, Federal Register, Vol. 46, No. 66, Tuesday, April 7, 1981, p. 20848 (emphasis added). The instant case illustrates the stated purpose of the 1981 amendments. Carmichaels have based their Petition on the highly technical premise that Payment Center could only disclose the balloon payment on in a dollar figure, even though no accurate dollar figure could be ascertained.

To summarize, the 1971 Letter has been stripped of authority, and the regulation it interpreted has been superseded by a successor regulation that was made purposefully less stringent to prevent lawsuits like the one at bar. In addition, The 1971 Letter does not represent the spirit of TILA as currently formulated, and therefore is no more persuasive than it is binding. In short, it is nothing more than a relic.

The Petition for Certiorari depends entirely upon the argument that the court below should have recognized the 1971 Letter as authoritative and deferred to it in accordance with *Milhollin*. That argument is simply frivolous. The Petition for Certiorari should be denied.

II. THE PETITION HAS OFFERED NO COMPELLING REASON WHY CERTIORARI SHOULD BE GRANTED IN THIS CASE.

Supreme Court Rule 10 notifies litigants that review on certiorari is not a mater of right, and that a petition for certiorari will be granted only for compelling reasons. Rule 10 indicates the character of those considerations which this Court is likely to find compelling. Rule 10 indicates review may be appropriate where:

> **(a)** a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial

> proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power;
>
> **(b)** a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals;
>
> **(c)** a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

U.S. Sup. Ct. Rule 10. The only vague effort the Petition makes to establish grounds for review is found at page 8 of the Petition, which states:

> CONSIDERATIONS GOVERNING REVIEW ON CERTIORARI
>
> The Writ of Certiorari should be granted in this case because the U.S. Court of Appeals for the Seventh Circuit has entered a decision in defiance of the FRB's long-standing interpretation of the Truth in Lending Act, 15 U.S.C. § 1638(a)(6), and Regulation Z, 12 C.F.R. § 226.18(g), that the amount of any payment must be expressed as a dollar figure. FRB Letter No. 469 dated April 19, 1971. (Pet. App. 82a).

The 1971 Letter and the lower court's supposed defiance of it are the sole reasons offered to justify Certiorari. Because the Letter carries no persuasive or binding authority to which the court below might have deferred, no real reason for Certiorari is offered at all. The Petition for Certiorari should be denied.

III. FURTHER REVIEW IS NOT NECESSARY BECAUSE THE ISSUE AT HAND IS CURRENTLY BEING ADDRESSED IN A MORE APPROPRIATE FORUM.

The Petition for Certiorari clearly establishes that further judicial review in this case will serve no purpose. At Page 14, the Petition offers the following:

> On November 25, 2003 the Federal Reserve Board issued Regulation Z: Docket No. R-1167. (Pet. App. 47a-81a). These proposed additions to Regulation Z expressly included the rule that disclosure of "amount" is to be expressed as a numerical figure. In its commentary thereto, the FRB referenced this litigation and its disapproval of the decision below. . . .

The Petition goes on to support this statement with the following quote from the Federal Reserve Board:

> This interpretation addresses a matter discussed in a recent court decision regarding the disclosure of payments scheduled to repay a closed-end credit transaction. *See* 15 U.S.C. § 1638(a)(6); 12 C.F.R. § 226.18(g). The Board believes that the decision,

> by endorsing narrative descriptions rather than numerical amounts, may lead to confusion in disclosures.

Regulation Z: Docket No. R-1167, November 25, 2003. This information, presumably offered as proof that the court below made the wrong call, shows that the Federal Reserve Board has begun the process of deciding what the rule should be. As the Court recognized in *Milhollin*:

> Congress delegated broad administrative lawmaking power to the Federal Reserve Board when it framed TILA. The Act is best construed by those who gave it substance in promulgating regulations thereunder. Furthermore, Congress has specifically designated the Federal Reserve Board and staff as the primary source for interpretation and application of the truth-in-lending law.

Id., 444 U.S. 555 at 566. Thus, both Congress and this Court have recognized that the Federal Reserve Board should be the font of TILA wisdom. Now that the Federal Reserve Board has undertaken consideration of whether final payoffs of loans should always be stated in dollars rather than descriptions, this Court should defer to that process, just as *Milhollin* requires judicial deference to the outcome of that process.

CONCLUSION

The Petition argues that *Milhollin* required the court below to treat defunct law as authoritative – a patently frivolous argument. Moreover, because the Federal Reserve Board is actively considering whether or not the rule stated in the opinion below will stand, and has the authority to decide whether it will, further review by this court will be superfluous. Finally, the Petition makes no attempt to demonstrate that the issue presented is sufficiently compelling to justify this Court's attention. For these reasons, Respondent respectfully requests that the Petition be denied.

Respectfully submitted,

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IN THE

Supreme Court of the United States

HARRY CARMICHAEL AND LOUISE CARMICHAEL,
PETITIONERS

v.

THE PAYMENT CENTER, INC.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

REPLY BRIEF

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CARMICHAEL V. PAYMENT CTR., INC., 336 F.3D 636 (7TH CIR. 2003) 1

Pursuant to Rule 15-6 of the Rules of the Supreme Court of the United States, Petitioners Harry Carmichael and Louise Carmichael submit this Reply Brief in response to the Brief in Opposition of Respondent Payment Center, Inc. (PCI).

I. PCI HAS CONCEDED THE ERROR OF THE COURT BELOW.

Respondent PCI does not defend the decision of the U.S. Court of Appeals for the Seventh Circuit that disclosure of the amounts due in the payment schedule need not be stated in a dollar amount and instead may be described in narrative form. *Carmichael v. Payment Ctr., Inc.*, 336 F.3d 636 (7th Cir. 2003). The Federal Reserve Board (FRB) refuted this decision and stated: "The Board believes that the decision, by endorsing narrative descriptions of amounts rather than numerical amounts, may lead to confusion in disclosures." (Pet. App. 53a) In fact, amounts have always been disclosed as a dollar figure. Thus, PCI leaves Petitioners with little to reply to.

II. THE LOWER COURT'S DECISION SHOULD BE VACATED AND REMANDED TO THE SEVENTH CIRCUIT TO CONFORM ITS DECISION TO THE INTERPRETATION OF THE FEDERAL RESERVE BOARD.

As a result of the lower court's decision, the FRB has been forced to implement the administrative rule making procedure. (Pet. App. 47a *et seq.*) Had the Seventh Circuit accepted the plain statement of the regulation and held that the numerical disclosures are to be stated as dollar amounts, the FRB would have

been saved from initiating this rulemaking. Furthermore, although the proposed rulemaking by the FRB will resolve this issue for future borrowers outside the Seventh Circuit, it does not correct the inaccurate disclosures made to Mr. and Mrs. Carmichael by PCI or the jurisprudential consequences within the Seventh Circuit. Respondent concedes that the FRB has begun administrative procedures regarding the interpretation of the Truth in Lending Act but provides no principled reason why the decision below should remain uncorrected.

CONCLUSION

The decision of the court below should be vacated and remanded to the Seventh Circuit to correct its ruling to conform with the clear interpretation of the Federal Reserve Board.

Respectfully submitted,

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